

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

THE UNITED STATES OF AMERICA, :
PLAINTIFF : Case No. 5:13-CR-32-MTT
v. :
June 18, 2014
Macon, Georgia
JAMES HINTON, ET AL, :
DEFENDANTS. :

CRIMINAL JURY TRIAL
Volume 8 of 10 (Afternoon Session)

BEFORE THE HONORABLE MARC THOMAS TREADWELL
UNITED STATES DISTRICT JUDGE, PRESIDING

APPEARANCES:

FOR THE GOVERNMENT:

FORREST CHRISTIAN, AUSA
TONA BOYD, AUSA
UNITED STATES DEPT OF JUSTICE
950 PENNSYLVANIA AVE, NW
WASHINGTON, DC 20530

FOR THE DEFENDANTS:
JAMES HINTON:

DAVID WOLFE
101 MARIETTA ST. NW, STE 3325
ATLANTA, GA 30303

CHRISTOPHER HALL:

BRIAN JARRARD
230 THIRD STREET
MACON, GA 31201

RONALD LACH:

DEBRA GOMEZ
P.O. BOX 13523
MACON, GA 31208

DELTON RUSHIN:

JOHN FOX
P. O. BOX 209
MACON, GA 31202

DERRICK WIMBUSH:

FRANKLIN HOGUE
P. O. BOX 1795
MACON, GA 31202

TYLER GRIFFIN:

PAGE PATE
101 MARIETTA ST., STE 3300
ATLANTA, GA 30303

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P R O C E E D I N G S**June 18, 2014****12:50 p.m.****THE COURT:** Mr. Christian, anything to report?

MR. CHRISTIAN: No, Your Honor. I did not have an opportunity to talk to anybody at the break. I believe Mr. McLaughlin went to lunch.

MR. HOGUE: He's back. I just saw him outside.

MR. CHRISTIAN: Okay.

MR. HOGUE: I told him to come in because you wanted to talk to him. So he should be around here somewhere.

MR. CHRISTIAN: Your Honor, I mean, I think the bottom line is I don't have any basis to dispute the authenticity of the materials that the warden brought in. I don't have any information to the contrary other than having asked for them myself and not received them. I don't have any basis to establish that they are in-authenticate. So I concede they're authenticate. I concede they're admissible. I guess the government would just say that under the circumstances I don't think Mr. McLaughlin needs to come and testify to that fact. I don't have any basis to challenge it.

MS. GOMEZ: Your Honor, I hate to interrupt briefly, but the witness who's supposed to come up next just got a ticket and asked if he'd have time to go and

1 move his car real quick.

2 **THE COURT:** All right. You're talking about
3 Caldwell?

4 **MS. GOMEZ:** Yes, Caldwell. Is that okay,
5 Judge?

6 **THE COURT:** He's needs to hurry, yes. Were you
7 going to use either of these custodial witnesses for any
8 reason other?

9 **MR. HOGUE:** Yes. Just briefly, but I did plan
10 on having him explain a couple of the notations on the
11 time sheets, and he could answer a question about one of
12 those notations.

13 **THE COURT:** Is he out there?

14 **MR. HOGUE:** I'll check. When I saw him he was
15 standing outside using the phone, and I told him to come
16 on in. He's not on this hallway. Do you want me to go
17 find him?

18 **THE COURT:** All right. Please, thank you.

19 **MR. WOLFE:** Judge, so that there's -- so that
20 everything moves smoothly, I had an opportunity over the
21 break to read the rule of completeness and some other
22 cases with regard to hearsay and evidence, and based on
23 the Court's ruling, I just want you to know I'm not going
24 to read from the transcript as a part of my case.

25 **THE COURT:** Okay. I looked at Mr. Samuel's

1 book during the break, and I didn't look at the case, but
2 there was a case cited for the proposition that even
3 though something else in a defendant's statement is
4 exculpatory, if the prosecution didn't touch on that
5 subject and it introduced a portion of the statement, the
6 remainder is not admissible. So, confirming in my mind
7 that the rule is confined to the document itself is what
8 is necessary based on the context of the document.

9 **MR. WOLFE:** Well, actually the rule itself says
10 it can be other documents, other recordings, or other
11 information that in fairness should be admitted. Rule
12 41?

13 **THE COURT:** I didn't mean to open that up
14 again.

15 **MR. WOLFE:** Okay.

16 **THE COURT:** Just, what I read confirmed what my
17 ruling was to that.

18 **MR. FOX:** Your Honor, just a brief housekeeping
19 matter. I had a chance to review the stipulation
20 concerning the Wimbish alibi defense. I just noticed in
21 the first sentence it reads that: We're about to hear
22 from a witness who may say that Mr. Rushin was not at the
23 prison at the time.

24 **THE COURT:** That's pretty significance.

25 **MR. FOX:** Yeah, I mean, I'm fine if we have

1 witnesses who want to say Mr. Rushin wasn't there, but I
2 just I noticed and mention that perhaps in --

3 **THE COURT:** Thank you.

4 **MR. HOGUE:** I found him.

5 **THE COURT:** Mr. McLaughlin? Is that correct?

6 **THE WITNESS:** Yes, sir.

7 **THE COURT:** Sir, come on up and have a seat.

8 **COURTROOM DEPUTY:** Do you solemnly swear that
9 the testimony you're about to give in this case shall be
10 the truth, the whole truth, and nothing but the truth, so
11 help you God?

12 **THE WITNESS:** I do.

13 **COURTROOM DEPUTY:** Thank you. Will you please
14 state and spell your name for the record?

15 **THE WITNESS:** Okay. Gregory R. McLaughlin.
16 M-C-L-A-U-G-H-L-I-N.

17 **THE COURT:** Mr. McLaughlin, I understand here
18 recently within the last day or two you've been involved
19 in gathering some documents relating to Mr. Wimbush; is
20 that correct?

21 **THE WITNESS:** Not the last day or two, Your
22 Honor. I just got this yesterday. Yes, sir.

23 **THE COURT:** Okay. Tell me that your
24 involvement was.

25 **THE WITNESS:** Well, all I did was when I got

1 the subpoena, on the second page of the subpoena it asked
2 me three questions. It asked for some documentation and
3 one --

4 **THE COURT:** Speak up a little.

5 **THE WITNESS:** And one of them was the time
6 sheets, and so what I did, I gave it to my administrative
7 assistant who was Ms. Cladd, Veronda Cladd, and asked her
8 to locate the documentation for me. And she went to the
9 personnel office and she retrieved the documentation.
10 She gave them to me along with a letter verifying that
11 she received them from the personnel office, and that's
12 it. That's all I had to do with it. So I have them in
13 pocket today.

14 **THE COURT:** So the request came to you, you
15 turned it over to Ms. Clad?

16 **THE WITNESS:** Yes, sir.

17 **THE COURT:** And then she went to the people who
18 presumably had these documents and then at some point the
19 documents came to you?

20 **THE WITNESS:** Yes, sir.

21 **THE COURT:** And you've got them with you?

22 **THE WITNESS:** Yes, sir.

23 **THE COURT:** Can I see them?

24 **THE WITNESS:** Yes, sir.

25 **THE COURT:** The originals, I assume, are still

1 at the prison?

2 **THE WITNESS:** Yes, sir.

3 **THE COURT:** Let me show you my copy, a couple
4 of pages of these documents that I've just marked as
5 Court's One, and the second page of that shows some time
6 for Derrick Wimbush on December 14, 2010?

7 **THE WITNESS:** Yes, sir.

8 **THE COURT:** And then there's a notation, a
9 parenthetical notation, that says "came back at 2000 to
10 2230."

11 **THE WITNESS:** Yes, sir.

12 **THE COURT:** Do you know how that came to be
13 there?

14 **THE WITNESS:** Hmm, to come back at 2000 hours
15 and 2230 hours?

16 **THE COURT:** Yes.

17 **THE WITNESS:** No. Now, this is the first time
18 I've seen this, but I'm looking at the dates, and on
19 those dates the only thing I can think of is that we, I'm
20 sure -- I don't know if there was something going on at
21 the institution or not, but I can't attest to that, Your
22 Honor.

23 **THE COURT:** Is that, though, typically what
24 would be done if an employee came back?

25 **THE WITNESS:** If he came back to work?

1 **THE COURT:** Yes.

2 **THE WITNESS:** Oh, yes, sir. Because there's no
3 other way to do it other than go to the comment section,
4 yes.

5 **THE COURT:** No way other than what?

6 **THE WITNESS:** There's no other way to write it
7 on the time sheet other than the comment section because
8 it was on the same date, and if you notice on 12/14th and
9 the next day is 12/15th, so if I was to go back to work
10 tonight, then I would have to come out in the comment
11 section and do the same thing, yes, sir. So that is
12 typical.

13 **THE COURT:** So although you don't know
14 presumably -- well, maybe I shouldn't ask it that way.
15 In the normal course of things, who would put that
16 notation "came back at 2000 to 2230?"

17 **THE WITNESS:** The officer, whomever time sheet
18 this was, and then the person that would testify to it is
19 his supervisor which his signature is at the bottom of it
20 saying that -- the supervisor's signature? He's the only
21 person that can testify to this, this time sheet, and
22 whether or not Mr. Wimbush came back.

23 **THE COURT:** Okay. I'll give you your copy
24 back.

25 **THE WITNESS:** Yes, sir.

1 **THE COURT:** Thank you, Mr. McLaughlin. Step
2 back outside, if you would, please, sir.

3 **THE WITNESS:** I can go home?

4 **THE COURT:** No, I can't let you do that yet.
5 All right, then. I don't know of any other issues to
6 address now. I sent you the cautionary -- or the
7 instruction I'm going to give. Did you get that?

8 **MR. HOGUE:** I did. I have comments on it, but
9 I'd like to clarify another thing with Mr. McLaughlin if
10 I could. As I understand it, the government is willing
11 to agree under Federal Rule of Evidence 901 that the
12 document is authentic, and I still need to get around the
13 803(6) hearsay exception, I presume, and I'm prepared to
14 do that unless that's also being conceded. Otherwise
15 I'll be glad to establish that it is a business record
16 and get around 803. And then I'll --

17 **THE COURT:** Let me let -- Mr. Christian, is
18 that an issue?

19 **MR. CHRISTIAN:** *(Shakes head)*.

20 **THE COURT:** That's not an issue.

21 **MR. HOGUE:** That's not an issue? Okay. What
22 I'll do then is just identify them, tender them, and then
23 discuss as much as he knows, which the Court explored
24 some of the limitations of his knowledge just now, and
25 I'll do that for the jury as well. And then the other

1 part would be the notation PT on those time sheets and
2 what that means. Now, that's all that I have to say
3 about him. If there's nothing more, I would like to
4 comment on this proposed limiting instruction.

5 **THE COURT:** Yes.

6 **MR. HOGUE:** Your Honor, I think it goes way too
7 far and gets into judicial comments on the evidence and
8 the weight of it. I can get more detailed. I've only
9 had a chance to read it just in the minutes before I went
10 to look for Mr. McLaughlin and briefly at my office when
11 I saw it on my cell phone. But on my first reading it
12 just simply strikes me that it goes far beyond what's
13 necessary to let the jury know that I did not comply with
14 a rule of procedure.

15 For example, the sentence beginning here: Beginning
16 in April of 2013 the government made 15 such requests to
17 Mr. Wimbush's lawyer. I can only guess that the impact
18 of that on a jury would be, you know, I'm obstinate, I
19 didn't care. I can't imagine what they'd make of that
20 when the fact is the rule says I have until 14 days
21 before trial. And, you know, that's what I didn't meet.
22 The fact that I got requested in 15 cover letters that
23 had Rule 12.1 cited in it, really actually, truthfully
24 indicates that I didn't read their cover letters. They
25 all came with a disc with thousands more pages of

1 evidence, and that's what I paid attention. We all know
2 how it is. They send one letter, they hit copy and send
3 another letter, make a few changes. I didn't read the 14
4 successive letters after the first one. So adding that
5 it was 15 requests, that says something that's inaccurate
6 and I think misleading to the jury.

7 And then despite these requests, the next sentence
8 says -- again, emphasizing that, you know, I'm blowing
9 them off, I don't care about the rules, I'm going to, you
10 know, cheat them. I don't know what all. But it just
11 reads that way to me -- Mr. Wimbush's lawyer did not
12 disclose that his witness would attempt to provide an
13 alibi testimony until after the start of the trial.
14 That's true. And "the government knew about the witness
15 but did not know she was an alibi witness." That's true.
16 Of course, they could establish that fact through cross
17 examination of her rather than having the Court establish
18 it as a fact. It is true that this was unintentional.
19 You know, I guess it's okay to repeat that I didn't do it
20 until after the trial started.

21 Then, the next paragraph I think also gets into some
22 misleading and inaccurate commentary on the facts. The
23 reason for the disclosure sentence is fine, and that is
24 the reason for the rule. But it does go on in the next
25 two sentences to suggest that there are prison records or

1 other evidence that are not available now that could have
2 disproved the alibi witness perhaps. That's the
3 intonation in those sentences. The fact is, I wish I had
4 them. I think they would show my client coming into the
5 prison on the time it says on this time sheet. I happen
6 to believe him and his alibi witness. And so this
7 assumes that it's not true, and the assumption should be
8 that the witness is testifying truthfully until
9 disproved. So that sentence sort of makes the opposite
10 and incorrect presumption about the testimony of the
11 alibi witness.

12 I agree that you will comment on the -- tell the
13 jury the credibility and weight of evidence rules. Your
14 then instructing them that they may consider the improper
15 failure of timely disclosure of this witness and the
16 impact of that late disclosure on the government's
17 ability to rebut her, again, shifts the burden to a
18 presumption that the witness is not testifying truthfully
19 after having taken an oath to do so, when, in fact, you
20 tell the jury, I presume, in closing -- I mean, in the
21 charge that "presume witnesses are testifying truthfully
22 unless they're impeached.

23 And if the government wants to impeach her, fine,
24 but it looks like the Court is telling the jury, you may
25 consider her to be impeached already because they didn't

1 get a chance to go out and disprove her.

2 So I don't want to lose my witness, but the cure
3 here seems perhaps worse than the disease I've created,
4 and I do take the full responsibility for that. I know
5 I'm in this position because of my own fault, but I also
6 don't want to be further harmed by my own mistake, and
7 I'm happy to let the government cross examine her to
8 their heart's content about her credibility and so on,
9 but I think in reality it just goes too far.

10 **THE COURT:** Mr. Christian?

11 **MR. CHRISTIAN:** Well, Your Honor, I share Mr.
12 Hogue's dissatisfaction, but at the other end of the
13 spectrum, I think any good compromise probably leaves
14 everyone dissatisfied. I'd like to see Ms. Clark
15 excluded. I asked for her phone records yesterday, which
16 is the first time I got to talk to her about this issue.
17 I haven't gotten her phone records. I didn't find her
18 creditable about the extent of her contact with Defendant
19 Wimbush. I don't have any way to get phone records or
20 see what text messages she says that she got in
21 connection with this case or when she got that text
22 messages.

23 With respect to the notice requirements, I got
24 notice yesterday that these documents existed. I asked
25 for them in 2012. I'm not happy about that. I certainly

1 would have changed the way the government presented its
2 case if I'd been given this material 14 days ago or 14
3 days before a trial started. I've always been given that
4 opportunity. And so I certainly still seek exclusion of
5 those materials, but I think the Court has crafted a
6 reasonable compromise even though I am dissatisfied with
7 it.

8 **THE COURT:** All right. I'm going to make a
9 couple of changes.

10 **MR. HOGUE:** It does say Rushin instead of
11 Wimbush.

12 **MR. CHRISTIAN:** That would be one change I
13 would ask for.

14 **THE COURT:** Mr. Fox has already adopted that.

15 **MR. FOX:** Yes, we can stipulate to that.
16 That'd be fine.

17 **THE COURT:** I will change "15" to "many." And
18 by the way, the 14-day requirement it's not just 14 days
19 before trial. It's 14 days after the request, no later
20 than 14 days.

21 **MR. HOGUE:** I misstated. I remember there was
22 14 days in there somewhere.

23 **THE COURT:** Instead of "despite these
24 requests," I'm going to say "however." I will in the
25 last paragraph strike "improper." And then the last two

1 lines will read "the government's ability to respond as
2 you consider the weight to be given to her testimony."
3 Is Mr. Caldwell back from moving his car?

4 **MS. GOMEZ:** Yes, Judge, I stepped out, and he
5 is back.

6 **THE COURT:** I'm sorry? He is outside?

7 **MS. GOMEZ:** Yes, Judge. I stepped out, and he
8 is back.

9 **THE COURT:** Okay. Thank you.

10 **MR. CHRISTIAN:** Your Honor, do you want to
11 address the stipulation regarding Franklin Jones?

12 **THE COURT:** Has that been reached?

13 **MS. GOMEZ:** Your Honor, we have -- I added one
14 bit, and we have reached that. However, I know that
15 other counsel wanted to object to a portion of it.

16 **MR. JARRARD:** I do, Your Honor, on behalf of
17 Mr. Hall. I've reviewed the proposed stipulation. I
18 would ask the Court to consider -- I'll wait til you have
19 a copy. I would ask Your Honor to consider taking out
20 the word "repeatedly" in the first paragraph, second
21 line. Do you see where I'm talking about? "After he had
22 been punched in the face repeatedly?"

23 **MR. CHRISTIAN:** The government agrees, Your
24 Honor, no objection.

25 **MR. JARRARD:** All right, and then, Your Honor --

1 **THE COURT:** Wait. Just take it out completely?

2 **MR. JARRARD:** Yes, sir. Strike it. The third
3 paragraph, I think the second sentence, it's got a typo,
4 one, but, Jones said that he had -- strike that "he" --
5 refused to meet previously because he had been -- I'd
6 suggest "advise," instead of "told" maybe. But my real
7 concern is this. It says "by a prison supervisor that he
8 should not meet with federal authorities." I presume
9 that means a prison supervisor at his current facility.
10 However, I would suggest that it say "by an individual
11 with the Department of Corrections at the prison where he
12 was housed at the time."

13 **MR. CHRISTIAN:** No objection, Your Honor.

14 **MR. JARRARD:** Okay.

15 **THE COURT:** All right.

16 **MS. BOYD:** He had been advised?

17 **MR. JARRARD:** I think "told."

18 **THE COURT:** "Because he had been told by a
19 Department of Corrections official at the prison where he
20 was then housed."

21 **MR. JARRARD:** Yes.

22 **THE COURT:** Something to that effect?

23 **MR. JARRARD:** Yes. Yes, sir. And then finally
24 I just think on the next paragraph it should say
25 "Franklin Jones also said." Those are my only suggested

1 changes.

2 THE COURT: All right.

3 MR. JARRARD: Do you see that last one?

4 THE COURT: Should say what?

5 MR. JARRARD: "Franklin Jones also." Just add
6 the word "also."

7 MR. CHRISTIAN: No objection, Your Honor.

8 THE COURT: When would you propose that this be
9 read to the jury?

10 MS. GOMEZ: Judge, may I ask Ms. Boyd a
11 question? Ms. Boyd, does the Court -- the copy you gave
12 to the Court have that other part?

13 MS. BOYD: I'll email it to Teri.

14 MS. GOMEZ: There was one additional thing I
15 wanted you to --

16 MR. JARRARD: Judge, your copy does end with
17 the recitation of his conviction, right?

18 THE COURT: "Franklin Jones has been convicted
19 of felony murder and is currently incarcerated in a
20 prison run by the Georgia Department of Corrections?"

21 MR. JARRARD: Yes, sir. Just making sure.

22 THE COURT: Are the other defendants aware of
23 this latest edition?

24 MR. CHRISTIAN: The edition, Your Honor, is
25 just that "on April 4th, 2012 Franklin Jones filed a

1 civil complaint in which Defendant Lach was not named as
2 a defendant."

3 **MS. GOMEZ:** Yes, that was the only thing.

4 **MR. WOLFE:** With regard to the other issues,
5 Judge, we conferred and Mr. Jarrard shared the
6 appropriate --

7 **THE COURT:** So, it seems to me -- Mr. Hogue,
8 did you have something?

9 **MR. HOGUE:** I did. I just heard the edition
10 and the truth of the matter is he did not name Wimbush
11 either or Hall, so --

12 **MR. PATE:** It's already into evidence who he
13 named.

14 **THE COURT:** Yeah.

15 *(Counsel Aside)*

16 **MR. HOGUE:** But putting that line in does
17 emphasize, one --

18 **MS. GOMEZ:** Well, Your Honor, okay, I can take
19 Mr. Lach's name out, but chronology is what I'm concerned
20 about. Can we add: On April 4th Mr. Franklin Jones
21 filed a civil lawsuit?

22 **MR. JARRARD:** Which is in evidence.

23 **THE COURT:** Has that complaint been admitted?

24 **MR. JARRARD:** It has not.

25 **MS. GOMEZ:** It has not, Judge, and remember one

1 of the other witnesses could not remember the lawsuit. I
2 wanted to just establish the date with Franklin Jones.
3 But taking out Lach out is fine, but can I have please
4 have the date in there of when he filed the lawsuit?

5 **THE COURT:** Well, he probably couldn't tell you
6 the date himself.

7 **MS. GOMEZ:** Yes, Judge --

8 **THE COURT:** But the date can be established
9 from the court records.

10 **MR. CHRISTIAN:** The government has no objection
11 to the date.

12 **THE COURT:** That can be a separate stipulation.
13 It doesn't have to be in his statement.

14 **MS. GOMEZ:** And, Judge, Mr. -- if he was going
15 to take the stand, he was going to be able to do that
16 because he filed his own lawsuit himself and has a file
17 stamped copy in his legal paperwork.

18 **THE COURT:** But, still, I mean, if it's a court
19 record, there's no dispute, and that can be a separate
20 stipulation. No reason to get into it in this statement.

21 **MS. GOMEZ:** And how would the Court propose we
22 do both stipulations?

23 **THE COURT:** What I would suggest is that I
24 would tell the jury that in Ms. Gomez's -- in her opening
25 statement she said that she would be bringing you the

1 testimony of Inmate Franklin Jones. Instead, Ms. Gomez
2 and the government have reached a stipulation with regard
3 to the relevant testimony that Mr. Jones would provide.
4 And I'll allow Ms. Gomez to read that stipulation to you.
5 And then I will say: I advise you also that Mr. Jones
6 filed his lawsuit which you heard about earlier on --
7 what was the date?

8 **MS. GOMEZ:** April 4th, 2012.

9 **THE COURT:** Okay.

10 **MS. GOMEZ:** Thank you, Judge.

11 **THE COURT:** All right. Let's bring our jury in
12 and Mr. -- Mr. Pate?

13 **MR. PATE:** Your Honor, I have one issue on the
14 witness, Mr. McLaughlin, and I intended to tender the
15 time records for Mr. Griffin. I don't think there was an
16 issue as to authenticity of those records, but I just
17 wanted to make sure.

18 **MR. CHRISTIAN:** Your Honor, actually the
19 government's position would just be that all of the
20 records that he has provided to the defense last night
21 should be introduced together for all four of the
22 defendants.

23 **THE COURT:** Okay.

24 **MR. WOLFE:** If Ms. Gomez doesn't, I intend to
25 ask him -- or Mr. Hogue -- whether or not he threw pepper

1 spray cans into a closed cell with inmates to torture
2 them, which was testified to by Mr. Redden, if I'm not
3 mistaken.

4 **MR. HOGUE:** I don't intend to get into that
5 but --

6 **THE COURT:** Are you talking about taking him on
7 direct? Come in, Mr. Caldwell. We can do that.

8 **MR. WOLFE:** Just that one question.

9 **MR. CHRISTIAN:** And with that one question,
10 Your Honor, to be clear, as the warden at that time, the
11 door is open to everything.

12 **MR. WOLFE:** What does that mean, the door is
13 open to everything? I'm asking whether he did it.

14 **THE COURT:** I understand, but he's certainly is
15 going to be subject to cross examination.

16 **MR. WOLFE:** As to whether or not he did it.
17 What other issues are there?

18 **THE COURT:** Well, you also get into why he
19 wouldn't admit, as you saw with Mr. Bobbitt, which nobody
20 objected to that -- you know, there's some consequences.

21 **MR. WOLFE:** Oh, I don't mind him saying: And
22 if you admitted that, you'd be in trouble and you could
23 be prosecuted, and all that stuff. I'm okay with that.

24 **THE COURT:** Okay. Let's bring them in.

25 *(Jury In)*

1 **THE COURT:** I know we're 20 minutes late,
2 ladies and gentlemen, but I assure we've made a lot of
3 progress in terms of moving things along. Mr. Christian,
4 you may conduct your cross examination.

5 **MR. CHRISTIAN:** Thank you, Your Honor.

6 **CHRISTOPHER CALDWELL**

7 Witness, previously sworn, testified on

8 **CROSS EXAMINATION**

9 **BY MR. CHRISTIAN:**

10 **Q.** Mr. Caldwell, you were a CERT officer at Macon
11 State Prison until last Friday?

12 **A.** Yes, sir.

13 **Q.** Let's start with something we agree on. You agree
14 that you know just from common sense that officers can't
15 beat inmates to punish them?

16 **A.** Yes.

17 **Q.** You didn't have to go to the academy to know that
18 officers can't beat inmates to punish them?

19 **A.** Yes.

20 **Q.** You didn't have to have any special training to
21 know that officers can't beat inmates to punish them?

22 **A.** Yes.

23 **Q.** When you say yes, you needed special training or
24 no, you didn't need special training?

25 **A.** You didn't need special training. It's just common

1 sense.

2 **THE COURT:** It's what?

3 **THE WITNESS:** It's common sense.

4 **Q. BY MR. CHRISTIAN:** Let's talk about Franklin Jones.
5 You didn't see any injuries to him when you saw CERT take
6 him from the dorm on October 25th, 2010.

7 **A.** I can't remember. I can't remember that.

8 **Q.** Do you remember testifying before the federal grand
9 jury on May 8, 2012?

10 **A.** I can't recall. I have to see something.

11 **Q.** Sure. I can provide you a copy of your grand jury
12 transcript.

13 **MR. CHRISTIAN:** Your Honor, may I approach?

14 **THE COURT:** You may.

15 **Q. BY MR. CHRISTIAN:** I believe this is Government
16 Exhibit Number 126 marked for identification. Mr.
17 Caldwell, is that your grand jury transcript?

18 **A.** Yes.

19 **Q.** On page 28, line 15, were you asked: Did Jones,
20 did Franklin Jones, the inmate, have any physical
21 injuries when CERT took him away? Was your answer: Not
22 to my knowledge?

23 **A.** Let me check. Give me a minute.

24 **Q.** Do you see that on page 28, line 15?

25 **A.** Line 15? Yes, I see it.

1 Q. That was your answer then, you didn't have any
2 knowledge of injuries to Franklin Jones?

3 A. Yes, that's correct.

4 Q. Let's move to Terrance Dean, on December 16th --

5 MR. WOLFE: I'd object. That wasn't his entire
6 answer. Mr. Christian said "okay," and then he continued
7 his answer.

8 MR. CHRISTIAN: The witness has answered the
9 question, Your Honor. If Mr. Wolfe wants to do any
10 follow-up questions of his own, he's happy -- or welcomed
11 in my book to do it.

12 THE COURT: I think that's correct.

13 Q. BY MR. CHRISTIAN: Let's move to December 16th,
14 2010, Inmate Terrance Dean. Do you recall that incident?

15 A. Yes.

16 Q. You didn't see any injuries to Terrance Dean when
17 he left the gym, did you?

18 A. When he left the gym?

19 Q. I mean, the dorm, I'm sorry.

20 A. From my -- I believe from the statement that I
21 wrote, after I pulled Mr. Dean off the inmate, if I'm not
22 mistaken, if I can recall, I seen a glimpse side of his
23 face -- I can't -- after I pulled him off the officer,
24 and I really couldn't tell if he had any injuries or not,
25 but I believe I also stated that if you got into an

1 altercation, that more than likely injuries would occur
2 so.

3 **Q.** That's your testimony today?

4 **A.** Yes, pretty much.

5 **Q.** I'm going to show what's been marked for
6 identification as Government's Exhibit 127.

7 **MR. CHRISTIAN:** May I approach, Your Honor?

8 **THE COURT:** You may.

9 **Q.** **BY MR. CHRISTIAN:** Mr. Caldwell, what is
10 Government's Exhibit Number 127?

11 **A.** This is a use of force supplement.

12 **Q.** Who filled it out?

13 **A.** Well, this is typed up, but --

14 **Q.** Is that your name at the bottom?

15 **A.** Yes, it is.

16 **Q.** Did you sign this?

17 **A.** That's not my handwriting.

18 **Q.** Does it say Christopher Caldwell at the bottom of
19 this document?

20 **A.** Yes, it is, but that's -- that's not my
21 handwriting.

22 **Q.** You didn't write this?

23 **A.** I probably did.

24 **Q.** You probably --

25 **A.** Yes, yes, yes. Yes.

1 Q. You did write it?

2 A. Yes.

3 MR. CHRISTIAN: Your Honor, I would move to
4 admit Government's Exhibit Number 127 and publish it to
5 the jury.

6 THE COURT: Any objections?

7 MS. GOMEZ: None.

8 THE COURT: It's admitted without objection.

9 MR. CHRISTIAN: Ms. Hatcher, can you tell me
10 how to take the blue box off there? Very good.

11 Q. BY MR. CHRISTIAN: All right, Mr. Caldwell?

12 A. Yes.

13 Q. Government's Exhibit Number 127, you now know this
14 is your use or force supplement, right?

15 A. Yes.

16 Q. And it's for Terrance Dean, right?

17 A. Yes.

18 Q. And it's for December 16th?

19 A. Yes.

20 Q. You used force on Terrance Dean.

21 A. No.

22 Q. You wrote a use of force supplement.

23 A. Well, if you call just removing him from the
24 officer, I just removed him, yes, but -- is that what you
25 say --

1 Q. Mr. Caldwell --

2 A. Yes.

3 Q. -- did you use force on Mr. Dean?

4 A. Yes. If I wrote a use of force supplement that
5 means I used force on Mr. Dean.

6 Q. And you agreed that this is your use of force
7 supplement, right?

8 A. Yes. But it's -- yes.

9 Q. Okay.

10 A. Yes.

11 Q. And you did use force on him?

12 A. I removed him from the officer, yes.

13 Q. Right.

14 A. If that's what you call force, yes.

15 Q. I'm asking what you call force. You wrote the use
16 of force supplement.

17 A. But that's what you're saying, so if I -- yes, I'm
18 saying that I removed him from off the officer, so if
19 that what you call force, then, that's force.

20 Q. It's not really what I call it, Mr. Caldwell, it's
21 what you say.

22 A. Yes, it's a use of force supplement, so therefore,
23 yes.

24 Q. Okay. You didn't mention any injuries to Terrance
25 Dean in your use of force supplement, did you?

1 A. No, because I also stated that I pulled him off of
2 the officer, and once I pulled him off of the officer, my
3 attention went straight back to the officer. So I really
4 wasn't looking for any injuries.

5 Q. My question was you didn't mention any injuries in
6 your use of force supplement, did you?

7 A. No.

8 Q. And you're supposed to note injuries if you see
9 injuries, correct?

10 A. That's correct.

11 Q. Okay. And you didn't put any in your use of force
12 supplement.

13 A. Yes, because I only seen -- I told you -- I only
14 stated to you what I seen at the time. So at that time
15 if he had any injuries, I didn't see it at that time. I
16 pulled him off of the officer and he was pushed into the
17 crowd. So at that time my focus went back to the
18 officer, so I really couldn't tell you if I seen any
19 injuries or not.

20 Q. I'm going to ask if you recall your interview with
21 the GBI agent, Terry Hunt?

22 A. Yes, I do.

23 Q. Do you remember that interview? That was the one
24 you said you weren't happy about, right?

25 A. Yes.

1 Q. Did you tell the GBI agent you did not recall
2 seeing any visual injuries to the inmate or the inmate's
3 face?

4 A. Could I see that? Do you have --

5 Q. I'm just asking if you recall saying that.

6 A. I don't recall. I can't recall if I said it or
7 not.

8 Q. I'm going to ask you -- the next question I have
9 is: When you testified in the federal grand jury, do you
10 remember being asked about your interview with Terry
11 Hunt?

12 A. Yes.

13 Q. I'm going direct your attention to page 24, line 8.
14 You were asked in the grand jury: I'm going to ask you
15 if the GBI agent correctly reported what you said.
16 Officer Caldwell could not recall seeing any visual
17 injuries to the inmate or the inmate's face. Do you see
18 on line 24 -- I mean, page 24, line 15, your answer was:
19 Yes, that was correct. And you were asked then on page
20 25: Is that all correct? And you said "yes."

21 THE COURT: Let him get to it now.

22 Q. BY MR. CHRISTIAN: Do you see on 24, page 24, line
23 8: I'm going to ask you --

24 A. Okay. Line 8. Okay.

25 Q. 24, line 8: I'm going to ask you if the GBI agent

1 correctly reported what you said. And you were asked on
2 line 24 -- on page 24, line 15: Officer Caldwell could
3 not recall seeing any visual injuries to the inmate or
4 the inmate's face.

5 A. Yes.

6 Q. You said "yes."

7 A. Yes.

8 Q. So your testimony back in May of 2012 was the GBI
9 agent got it right?

10 A. Yeah, for the most part, yes.

11 Q. You said yes.

12 A. Yes.

13 Q. I asked you if that part was correct?

14 A. Yes, yes. Yes.

15 Q. But today even if though you've acknowledged back
16 in 2012 the GBI agent got it right on the existence of
17 injuries --

18 A. Yes.

19 Q. -- today your testimony is you weren't happy about
20 that interview, right?

21 A. Yes, I wasn't.

22 Q. It didn't sit well with you.

23 A. Yes.

24 Q. It didn't sit well with you because you said he
25 didn't seem to believe you.

1 A. Yes.

2 Q. And you said that he wanted to hear a particular
3 story.

4 A. Yes.

5 Q. And you said he threatened you with prison if you
6 did not tell the truth, right?

7 A. Yes, yes.

8 Q. Did you lie to him?

9 A. No, sir.

10 Q. You told the truth?

11 A. Yes.

12 Q. So even though he said all this stuff you say he
13 said, you didn't change your story?

14 A. No.

15 Q. You still told him the truth?

16 A. Yes.

17 Q. When he told you the consequences for lying to him,
18 you told the truth?

19 A. It -- yes, I told the truth.

20 Q. And the truth was that you didn't see any injuries
21 to Terrance Dean?

22 A. Yes. Because I wasn't physically looking for any
23 injuries. My only -- my main goal what to get that
24 inmate -- separate that inmate from the officer. So
25 looking at injuries, I wasn't.

1 Q. You said that Agent Hunt from the GBI -- and that's
2 the Georgia Bureau of Investigation --

3 A. Yes.

4 Q. -- wanted a specific story from you?

5 A. Yes.

6 Q. That was your testimony today, correct?

7 A. Yes.

8 Q. And I believe, and correct me if I'm wrong, but you
9 said that he wanted you to tell -- he wanted you to say
10 that you had seen the defendants, your fellow CERT
11 officers, you had seen them do it -- you had seen those
12 officers do something to Dean?

13 MS. GOMEZ: Your Honor, I have to object.
14 That's a mischaracterization of the evidence. He was not
15 a CERT officer at the time this occurred. He became a
16 CERT officer after this CERT team left.

17 THE COURT: Yeah, that part should be
18 clarified.

19 MS. GOMEZ: Right.

20 Q. BY MR. CHRISTIAN: You were a CERT officer at the
21 time of your GBI interview, right, in 2011?

22 A. 2011. Yes.

23 Q. Okay. That's all I was saying.

24 A. Yes.

25 Q. So you felt like he was telling you that you had to

1 implicate CERT officers at a time when you were a CERT
2 officer?

3 A. Yes.

4 Q. And that he wanted a specific story from you?

5 A. Yes.

6 Q. And the specific story he wanted -- and tell me if
7 I got it wrong -- was that he wanted you to say you had
8 seen officers doing something to Dean?

9 A. Yes, pretty much.

10 Q. That's what he said to you?

11 A. Yes.

12 Q. No doubt in your mind?

13 A. Yes.

14 Q. Did he actually say that to you?

15 A. Yes. Physically he -- he basically -- whatever I
16 was saying to him, it was as if he didn't show any
17 interest, as if what I was saying is -- okay, basically
18 what I was telling -- what I was saying to him, it didn't
19 sit right with him. So, like I said in the last court
20 meeting I was here, he would oftentimes sit back and sit
21 up like when I had something to say, but when it wasn't
22 what he wanted to hear, he since didn't show any interest
23 to it so.

24 Q. I want to be clear. Did he actually tell you, I
25 want to hear these facts. I want you to implicate CERT

1 officers?

2 A. No, but that's how I felt at that time.

3 Q. That's how you felt.

4 A. Yes.

5 Q. He never actually said that to you?

6 A. No.

7 Q. You just got that from him leaning forward?

8 A. Yes. His actions, the actions that he was showing.

9 Q. So you --

10 A. His actions showed that wasn't showing any
11 interest. Basically, if I didn't say, like, I seen those
12 guys doing what they supposed to have did to that inmate,
13 he wasn't interested in my story. So it didn't sit right
14 with me. He came to the interview as to say that he
15 already knew what happened, and so what I said -- what I
16 had to say, it didn't matter.

17 Q. I want to be very clear. He didn't actually say
18 any of that to you, you just understood that from how he
19 moved his body movement?

20 A. Yes.

21 Q. So he never actually said that?

22 A. No.

23 Q. He just leaned forward at different times?

24 A. No. It was the actions that he showed.

25 Q. Please tell me what the actions were --

1 A. Okay.

2 Q. -- so you can communicate that whole paragraph.

3 A. Okay. When you're speaking with someone and you
4 feel as though -- as if they are lying about everything
5 they're saying, you will look at them in a strange way as
6 to say he's lying about everything, when I was only
7 speaking of the truth, and my truth didn't sit well with
8 him. He wanted for me to say that I had seen a group of
9 guys, the CERT team, use extra force -- or excessive
10 force on an inmate when I didn't. So I don't know where
11 you're trying to go with it, but that's --

12 Q. I just want to make sure I'm clear that he never
13 actually said any of that stuff you just told the ladies
14 and gentlemen of the jury that you understood him to say.

15 A. Yes.

16 Q. He just communicated that to you without the words?

17 A. Yes.

18 Q. And you managed to get all that just from the way
19 he was leaning back or leaning forward or making faces?

20 A. Yes. As to say that he didn't -- he wasn't
21 interested in what I had to say, so it was -- it was
22 nothing.

23 Q. Now, you were asked that same question when you
24 testified in this same courtroom back on May 27th, 2014.

25 Do you remember being asked that question?

1 **A.** Yes.

2 **MR. CHRISTIAN:** Your Honor, may I approach with
3 what's been marked for identification as Government's
4 Exhibit 128?

5 **THE COURT:** You may.

6 **Q.** **BY MR. CHRISTIAN:** Is that the testimony, the
7 transcript of your testimony from May 27th, 2014?

8 **A.** Yes.

9 **Q.** Any doubt in your mind about that?

10 **A.** No.

11 **Q.** Can I get you to turn to page 139. Your testimony
12 today -- let me ask you this before you read this
13 section. Your testimony today is that you understood
14 from Agent Hunt's actions --

15 **A.** Yes.

16 **Q.** -- that he wanted you to point the finger at CERT
17 officers for doing something to Terrance Dean?

18 **A.** Yes.

19 **Q.** On page 139 on line 15 you were asked: And as best
20 you can, when he, referring to Agent Hunt, said that
21 comment to you about going to prison or jail twice, do
22 you remember what it was specifically in reference to?
23 Do you see where I am?

24 **A.** Yes.

25 **Q.** You said: Me speaking about did I remember what

1 happened. I got to removing the inmate from off the
2 officer, basically he asked me, like, did you get a good
3 visual of the inmate, and when I spoke to him, see, he
4 sat up at the time cause he felt like I was fixing to
5 give him some -- like I was fixing to say the inmate
6 didn't have bruises on him, but basically what I told
7 him, I said, any time anybody get in an altercation,
8 there's going to be some bruises somewhere. So I didn't
9 know. So the only thing I did was grab the inmate, and I
10 pushed him back, and I secured that officer. So I
11 believe he wanted me to say, yeah, the inmate didn't have
12 nothing on him. So he sat back at that time, like what I
13 was saying wasn't the truth. So it was in that matter.

14 *(Reading.*

15 A. Yes.

16 Q. -- that manner?

17 A. Yes.

18 Q. Did I read that correctly?

19 A. Yes, you did.

20 Q. So your testimony just a couple weeks ago was that
21 what Agent Hunt wanted you to lie about was whether you
22 saw bruises on Dean or not, whether Dean was injured?

23 A. Pretty much.

24 Q. But your testimony today is that he wanted you to
25 implicate other officers?

1 A. That's basically saying the same thing.

2 Q. One's about an injured inmate, and one is about
3 pointing a finger at seeing officers do something to an
4 inmate.

5 A. Basically what it is, if the inmate had injuries,
6 he wanted me to say, like, that those guys did that to
7 that inmate. So basically that's what I was referring to
8 when I made the statement.

9 Q. You didn't mention at that testimony on May 27th,
10 2014 that Agent Hunt, by virtue of the way he moved his
11 body, was trying to get you to point the finger at CERT
12 officers, did you?

13 A. I don't recall.

14 Q. You don't recall?

15 A. No.

16 Q. You weren't happy with the GBI interview, right?

17 A. Yes. I wasn't happy.

18 Q. And you weren't happy because Agent Hunt made faces
19 at you?

20 A. No. Because he came down with the intention of
21 already knowing what happened, instead of trying to find
22 the truth, he somewhat -- he made it like he already knew
23 the truth, so basically whatever I was saying to him, it
24 didn't matter. It was like I was telling him a lie the
25 whole time.

1 Q. Did he say that to you, or is this, again, just the
2 way he's moving his body?

3 A. Yes, basically. And whatever I was saying to him,
4 he was, like, you basically lying. He didn't verbally
5 say it, but that's -- those were the actions that he was
6 showing.

7 Q. I don't suppose you could tell from the way I'm
8 moving my body what I'm trying to communicate to you
9 right now, can you? All right, very good. You knew
10 during the time of your GBI interview that other CERT
11 officers were being interviewed, right?

12 A. I can't recall. Only thing I knew, I was called up
13 and I went into this -- into the room with the GBI agent.

14 Q. And you've talked about your unhappiness with the
15 GBI interview. Were you unhappy at all with the way you
16 were treated during your FBI interview?

17 A. Pretty much. Only thing I did was just sit in the
18 FBI office, so it really wasn't much of a talk.

19 Q. So do you have any complaints about the way you
20 were treated by the FBI?

21 A. No. The only thing I did was just sit there
22 basically, so it really wasn't much of a conversation.

23 Q. My question was just, do you have any complaints?

24 A. No.

25 Q. Ultimately your friend and fellow CERT officer

1 Kadarious Thomas pleaded guilty, didn't he?

2 **A.** Yes, from what I heard.

3 **Q.** And you weren't happy about that, right? He was a
4 good friend of yours.

5 **A.** Yes, he's -- he was a good friend of mine.

6 **MR. CHRISTIAN:** Nothing further.

7 **THE COURT:** Any redirect?

8 **MS. GOMEZ:** No, sir.

9 **THE COURT:** Yes, sir?

10 **MR. WOLFE:** May I ask some questions about his
11 testimony and about the questions that were asked?

12 **THE COURT:** On cross or direct?

13 **MR. WOLFE:** On cross.

14 **THE COURT:** And how does that work?

15 **MR. WOLFE:** How does that work --

16 **MR. CHRISTIAN:** I don't understand, Your Honor.

17 **MR. WOLFE:** Well, Mr. Christian elicited
18 erroneous information, and I wanted to clarify it for the
19 jury.

20 **MR. CHRISTIAN:** I think that's an improper
21 characterization. The witness was asked about his grand
22 jury transcript. He looked at the transcript and he
23 answered the questions. If there's something that needs
24 to be clarified, I'm happy to have the whole transcript
25 introduced, Your Honor.

1 **MR. WOLFE:** I'm going to clarify the answer to
2 the one question that was given.

3 **THE COURT:** All right. In the interest of
4 that, ask him your one question.

5 **CROSS EXAMINATION**

6 **BY MR. WOLFE:**

7 **Q.** Do you remember being asked with Mr. Christian's
8 initial question on page 28, line 15 -- are you there?

9 **A.** Yes, I am.

10 **Q.** The question was: Okay, did Jones, did Franklin
11 Jones, the inmate, have any visible injuries when CERT
12 took him away? Do you see that question?

13 **A.** Yes.

14 **Q.** Will you do me a favor and read from line -- to
15 yourself - line 7 --

16 **MR. CHRISTIAN:** I'm going to object, Your
17 Honor, and we should approach.

18 **THE COURT:** Bring that testimony up.

19 **(SIDEBAR)**

20 **THE COURT:** What do you want him to read?

21 **MR. WOLFE:** I think his entire answer goes
22 through page 29, line 8. The answer to that very
23 question are given at 15.

24 **MR. CHRISTIAN:** And this is on cross, correct?

25 **MR. WOLFE:** It can be on direct. It doesn't

1 matter. I'll call him for direct.

2 **MR. CHRISTIAN:** Direct is over.

3 **MR. WOLFE:** I'll call him in rebuttal. But
4 through line eight of the next page is when the answer
5 ends.

6 **THE COURT:** Well, he says he was -- that Davis
7 was lying in his own puddle of blood.

8 **MR. CHRISTIAN:** Judge, if you read to line
9 eight, he's answering, he said I was paying more --
10 essentially he's saying -- he says exactly what he's
11 saying there. He says, okay, and the answer continues:
12 Again, not to my knowledge, okay, I really -- I really
13 couldn't tell you, but he was, you know, he was lying in
14 a puddle of blood. Like he did -- Officer Davis is the
15 -- he was lying in a puddle of blood. Like, who did it,
16 is the question that he rhetorically asked him, and his
17 answer of Franklin Jones -- Franklin Jones about the
18 time, sir, and then he goes, okay, I didn't really get a
19 chance to look at him like that, talking about --

20 **THE COURT:** He's clearly talking -- he's
21 attributing the blood to the officer. I'm not going to
22 allow that.

23 **MR. WOLFE:** Can I ask you one other thing?
24 When he says, I really didn't get a chance to look at
25 him, he just follows up his original question: But

1 sitting here today you have no memory that any injuries
2 to Franklin Jones when CERT took him away? Not that I
3 recall (*reading*).

4 **MR. CHRISTIAN:** I believe that was his answer
5 on cross.

6 **THE COURT:** That's the answer he gave.

7 **MR. WOLFE:** He doesn't -- the entirety of his
8 answer says why he didn't recall. He says "not to my
9 knowledge" and then explains why he doesn't recall, not
10 that the fellow didn't have injuries, which Mr. Christian
11 is trying to --

12 **MR. CHRISTIAN:** He says I don't recall, and
13 that's all that was elicited. Not to my knowledge and
14 not that I recall.

15 **MR. WOLFE:** But he explains why. The entirety
16 of his answer is included in the remaining lines.

17 **THE COURT:** Well, at most -- I think this was
18 throughout his testimony anyway -- the relevant thing
19 would be: I really didn't get a chance to look at him
20 like that. But sitting here today you have no memory of
21 any injuries to Franklin Jones (*reading*). The blood's
22 got nothing to do with it.

23 **MR. WOLFE:** We can take out the blood.
24 Precisely, he saying, I'm focusing on the blood. I
25 wasn't focusing on Franklin Jones, but the entirety of

1 his answer goes to line 8 on the succeeding page.

2 **THE COURT:** I'll give you this back.

3 **(BENCH CONFERENCE CONCLUDED)**

4 **THE COURT:** Ladies and gentlemen, in
5 Mr. Caldwell's grand jury testimony, which you heard
6 excerpts from earlier, he also said this with regard to
7 the question of whether he saw any injuries on Franklin
8 Jones: I really didn't get a chance to look at him like
9 that. Then the question: But sitting here today you
10 have no memory of any injuries to Franklin Jones when
11 CERT took him away. Not that I recall. *(Reading)*.

12 **MR. WOLFE:** Thank you, Judge. That's all I
13 have.

14 **THE COURT:** All right, Ms. Gomez?

15 **MS. GOMEZ:** Your Honor, I have nothing further
16 for Mr. Caldwell. May he be excused?

17 **THE COURT:** Thank you, Mr. Caldwell. You may
18 step down and you are excused.

19 **MS. GOMEZ:** Judge, next will be what we
20 discussed about the stipulation?

21 **THE COURT:** Ladies and gentlemen, you may
22 recall Ms. Gomez's opening statements, that she said that
23 was going to call Inmate Franklin Jones. And this is one
24 of the things we've been working on while you've been
25 back in the jury room. She and the government have

1 agreed to stipulate, that is, to agree, with regard to
2 what some of his -- or what his testimony would be that
3 he would give you if he were here. In other words,
4 they've agreed he would testify to certain facts and you
5 can take those facts as to what he would testify to. And
6 Ms. Gomez is going to tell you what those facts are.

7 **MS. GOMEZ:** Your Honor, do you want me to come
8 to the podium or from the lectern?

9 **THE COURT:** Just -- yeah, go to the lectern so
10 the microphone will pick you up.

11 **MS. GOMEZ:** Good afternoon. On January 25th,
12 2011 Franklin Jones told IIU investigators that he had
13 been beaten in the gym by CERT officers and that after he
14 had been punched in the face, he had blacked out and
15 could not recall which officers had hit him.

16 On January 10, 2013, Franklin Jones refused to meet
17 with an FBI agent. On March 14, 2013, Franklin Jones met
18 with an FBI agent. Jones says that he had refused to
19 meet previously because he had been told by a Department
20 of Corrections official at the prison where he was housed
21 at the time that he should not meet with federal
22 authorities.

23 Franklin Jones told the FBI agent that he had been
24 beaten in the gym by CERT officers and that after he had
25 been punched in the face, he blacked out and did not

1 remember much else until he got to medical.

2 On June 18th, 2014, Franklin Jones also said that
3 Defendant Ronald Lach was not present for the incident in
4 the gym and that the first time he saw Lach that day was
5 in the medical when Lach read him his rights. Jones next
6 saw Lach as he was led to segregation.

7 Franklin Jones has been convicted of felony murder
8 and is currently incarcerated in a prison run -- well, it
9 should be ran, I'm sorry -- ran by the Georgia Department
10 of Corrections (*reading*).

11 **THE COURT:** Thank you, Ms. Gomez. I want to
12 advise you of one additional fact, ladies and gentlemen,
13 and that is that the lawsuit that Mr. Jones filed -- you
14 will recall some earlier testimony about a lawsuit he
15 filed -- was filed on April 4th, 2012. All right. Ms.
16 Gomez, anything further?

17 **MS. GOMEZ:** No, sir, nothing further.

18 **THE COURT:** Does that conclude your evidence?

19 **MS. GOMEZ:** It does.

20 **THE COURT:** All right. I think, Mr. Hogue,
21 that brings us back to you -- Mr. Fox, was there anything
22 further?

23 **MR. FOX:** Nothing further, Your Honor.

24 **THE COURT:** Mr. Hogue?

25 **MR. HOGUE:** I'll get my first witness, Your

1 Honor.

2 THE COURT: Your first witness?

3 MR. HOGUE: Shurvon Clark.

4 THE COURT: That's the witness we discussed?

5 MR. HOGUE: Right.

6 THE COURT: Ask her to remain outside just for
7 a moment. We'll call you in just a moment, ma'am.

8 Ladies and gentlemen, before this witness testifies I
9 need to give you a special instruction.

10 You are about to hear from an alibi witness, that
11 is, a witness who may say that Mr. Wimbush was not in the
12 prison at a time when the government says he was. The
13 law requires a defendant to disclose to the government an
14 alibi witness when the government requests such
15 disclosure. Here, beginning in April 2013, the
16 government made many such requests to Mr. Wimbush's
17 lawyer, however, Mr. Wimbush's lawyer did not disclose
18 that this witness would attempt to provide alibi
19 testimony until after the start of trial.

20 The government did know about this witness, but it
21 did not know that she was to be an alibi witness. There
22 is no evidence that this failure to disclose was
23 intentional, but still, there was no disclosure until
24 after the trial started.

25 The reason for this disclosure requirement is to

1 give the government an opportunity to gather evidence to
2 counter the testimony of the alibi witness. Here, the
3 government did not have the opportunity that it would
4 have had if Mr. Wimbush had complied with the law to
5 gather that evidence that there was such evidence.

6 Prison records and other evidence are not as
7 available to the government as they would have been had
8 Mr. Wimbush complied with this requirement of disclosure.

9 At the end of the trial, I will give you
10 instructions on how you judge the credibility and weight
11 of evidence. In addition to that, I instruct you now
12 that you may consider the failure to timely disclose this
13 witness and the impact of that late disclosure on the
14 government's ability to respond as you consider the
15 weight to be given to this witness's testimony.

16 Mr. Hogue?

17 **COURTROOM DEPUTY:** Do you solemnly swear that
18 the testimony you're about to give in this case shall be
19 the truth, the whole truth, and nothing but the truth, so
20 help you God?

21 **THE WITNESS:** I do.

22 **COURTROOM DEPUTY:** Will you please state and
23 spell your name for the record.

24 **THE WITNESS:** Shurvon, S-H-U-R-V-O-N,
25 C-L-A-R-K.

1 SHURVON CLARK

2 Witness, having first been duly sworn, testified on

3 DIRECT EXAMINATION

4 BY MR. HOGUE:

5 Q. Hello, Ms. Clark. I see you're in uniform today.
6 What kind of uniform are you wearing?

7 A. Correctional officer's.

8 Q. And speak up for all the jury so they can hear you.
9 What kind?

10 A. Correctional officer.

11 Q. Where do you work?

12 A. Macon State Prison.

13 Q. What is your position there?

14 A. ID clerk.

15 Q. ID clerk? And how long have you worked at Macon
16 State Prison?

17 A. 14 -- 14 years and 4 months.

18 Q. And how long have you been the ID clerk?

19 A. I think about, almost five years.

20 Q. While you've been working there, did you come to
21 know Derrick Wimbush?

22 A. Yes.

23 Q. And do you remember how long ago you met him?

24 A. Hmm, probably in '09.

25 Q. 2009?

1 A. Yes.

2 Q. Was he a CO-1 then or a CERT member, or do you
3 know?

4 A. He was a CO-1.

5 Q. And did you and Mr. Wimbush develop a friendship
6 that blossomed into a relationship?

7 A. Yes.

8 Q. And does that mean you two saw each other, dated,
9 and so on?

10 A. Yes.

11 Q. And when did that begin, if you can remember, and
12 when did it end, if you can remember?

13 A. I think like in April of 2010.

14 Q. Was when it began?

15 A. It began in April of 2010.

16 Q. And how long did you two see each other?

17 A. Probably like, around July 2011.

18 Q. All right. About a year and a-half, a little less
19 than a year and a-half. Do you remember ever meeting the
20 government lawyers who are seated here?

21 A. Yes.

22 Q. And do you remember about what month and year that
23 was?

24 A. I know it was last year, but I don't remember what
25 month.

1 Q. Do you remember the occasion upon which you met
2 them, why you were meeting them?

3 A. Yes.

4 Q. What was that about?

5 A. Inmate Jabariss Miller.

6 Q. And do you remember generally that that was about
7 what happened behind the ID office where you work, or do
8 you even remember what that was about?

9 A. They asked me did I witness an assault on Jabariss
10 Miller behind ID.

11 Q. Did you?

12 A. No.

13 Q. And you came and testified at the grand jury about
14 that?

15 A. Yes.

16 Q. Okay. Now, let's fast forward to recent days. How
17 did you first receive notice or a request to get involved
18 in this trial like you are today? Do you remember how
19 and when that came about?

20 A. Hmm, one day last week -- I'm not sure of the
21 day -- Derrick Wimbush texted me and asked me if it was
22 okay if his lawyer called and talked to me about --
23 called and talked to me.

24 Q. And did his lawyer call and talk to you?

25 A. Yes. You called me that afternoon.

1 Q. And do you know who you talked to on the phone?

2 A. I remember the last name Hogue. I don't remember
3 the first name -- your first name.

4 Q. Do you know who I am?

5 A. I know your last name, but not your first name.

6 Q. You know I'm Derrick's lawyer?

7 A. Yes.

8 Q. Am I the one that talked to you on the phone last
9 week?

10 A. Yes.

11 Q. Now, between the time that you met with the grand
12 jury -- and, again, you said some time in 2013 that was
13 or '12? I might have missed it.

14 A. The grand jury?

15 Q. Right.

16 A. I think it was in 2013.

17 Q. Last year. Okay. Between that time and last week
18 when we talked, had anybody else approached and talked to
19 you about this case?

20 A. No.

21 Q. Including Derrick Wimbush?

22 A. No.

23 Q. Now, do you know Derrick Wimbush's family?

24 A. I know his mother, his brother, and his brother's
25 girlfriend.

1 Q. Where does his mother work?

2 A. At Macon State Prison.

3 Q. Do you see her on occasion at work?

4 A. Yes. If I go purchase food.

5 Q. She works in the food part of the prison?

6 A. Uh-huh, for staff.

7 Q. Have you seen her at the prison since you met with
8 the grand jury up until now?

9 A. Yes.

10 Q. Have you ever had any conversations with her about
11 this case?

12 A. No.

13 Q. Has anyone ever promised you anything of value to
14 get you to come here and testify today?

15 A. No.

16 Q. Has anyone threatened you in any way to get you to
17 come here and testify today?

18 A. No.

19 Q. In fact, are you here voluntarily? You're not even
20 under subpoena, are you?

21 A. No.

22 Q. You're here because I asked you to come?

23 A. -- me to come. Yes.

24 Q. Thank you. Now, let's talk about a particular day
25 in 2010 toward the end of the year. You know why you're

1 here. You know what we're going to talk about now,
2 right?

3 A. Yes.

4 Q. Is there any day in late 2010 where something
5 happened at the prison that causes you to have a
6 particular memory about that day? Was that too vague for
7 you?

8 A. Yes.

9 Q. All right. I'm talking about anything you might
10 know about Deputy Warden Hinton.

11 A. When he got assaulted?

12 Q. Yes.

13 A. Yes.

14 Q. Okay. Do you remember when that happened, not the
15 date. We won't have to remember the exact date, but do
16 you remember -- unless you do. Do you remember --

17 A. I remember when it happened. I don't remember the
18 date, but I remember it happening.

19 Q. Did you know Deputy Warden Hinton?

20 A. Yes.

21 Q. Now, let's talk about where you were earlier that
22 day. Had you been at work that day?

23 A. Yes.

24 Q. What are your work hours?

25 A. I think back then it was 7:45 to 4:30.

1 Q. That'd be a.m. to p.m.?

2 A. A.m. to p.m.

3 Q. And how did get to work typically, and specifically
4 how did you get to work that day, if you remember?

5 A. I drove my car.

6 Q. And were you dating Derrick Wimbush then?

7 A. Yes.

8 Q. Do you remember if Derrick Wimbush was at work that
9 day?

10 A. Yes.

11 Q. Do you remember leaving work that day?

12 A. Yes.

13 Q. And by what mode of transportation; whose car did
14 you leave work in?

15 A. My car.

16 Q. Were you by yourself?

17 A. No.

18 Q. Who was with you?

19 A. Derrick.

20 Q. What time did you get off?

21 A. I think after -- it had to be after 4:30 when the
22 count cleared.

23 Q. He rode with you?

24 A. Yes.

25 Q. Where did you two go?

1 A. To his mother's house.

2 Q. Where does his mother live? Or where did she leave
3 live then. She may still live in the same place.

4 A. Maulk, Georgia?

5 Q. Maulk, Georgia?

6 A. Uh-huh.

7 Q. About how far in minutes is that by driving from
8 the prison?

9 A. About 45 minutes.

10 Q. Did you go straight to the house?

11 A. Yes.

12 Q. Okay. Okay. What happened at the house that
13 evening that you remember as it relates to Deputy Warden
14 Hinton?

15 A. I remember Derrick on the phone talking to someone
16 from the prison about Mr. Hinton being assaulted and he
17 needed to come back to the prison.

18 Q. And after he got off the phone and you learned that
19 that's what it was about, what happened next?

20 A. He left in my car going to the prison.

21 Q. He borrowed your car?

22 A. Yes.

23 Q. Where did you stay? Did you stay at his mother's
24 house?

25 A. Uh-huh. Yes.

1 Q. And as far as you know he drove back to the prison?

2 A. That night?

3 Q. Right.

4 A. Did I drive back?

5 Q. Did he drive back?

6 A. Yes.

7 Q. Did he later on come back to his mother's house?

8 A. Yes.

9 Q. Were you still there?

10 A. Yes.

11 Q. And did he tell you anything about what had
12 happened at the prison?

13 A. Not that I can recall.

14 Q. Y'all didn't talk about it much?

15 A. Probably --

16 MR. CHRISTIAN: I'm going to object to the
17 extent he's trying to get in the defendant's statements,
18 Your Honor.

19 THE COURT: Mr. Hogue?

20 MR. HOGUE: Actual I expect her answer is, we
21 didn't talk about it, but --

22 THE COURT: So far that would be the
23 implication. Is that correct, ma'am, y'all didn't talk
24 about it?

25 THE WITNESS: I can't recall. I know he

1 probably mentioned that he got assaulted, but to what
2 extent we didn't go into detail.

3 **Q.** **BY MR. HOGUE:** All right. Now, did you learn that
4 this involved an inmate named Mario Westbrook, or did you
5 know that? The assault on --

6 **A.** At the time?

7 **Q.** The assault --

8 **A.** I didn't know who the inmate was at the time.

9 **Q.** Okay. You later learned the name of that guy?

10 **A.** Yes.

11 **Q.** All right. Now, Ms. Clark, are you here giving
12 this testimony truthfully?

13 **A.** Yes.

14 **Q.** Do you have a distinct and clear memory of that
15 night?

16 **A.** Yes.

17 **MR. HOGUE:** Your witness.

18 **THE COURT:** Mr. Christian?

19 **MR. CHRISTIAN:** Thank you, Your Honor.

20 **CROSS EXAMINATION**

21 **BY MR. CHRISTIAN:**

22 **Q.** Good afternoon, Ms. Clark.

23 **A.** Good afternoon.

24 **Q.** You work at Macon State Prison?

25 **A.** Yes.

1 Q. Currently?

2 A. Uh-huh.

3 Q. You work with Defendant Wimbush's mother?

4 A. Yes.

5 Q. A week or two ago your former boyfriend, Defendant
6 Wimbush, sent you a text message asking you to talk to
7 his defense attorney?

8 A. Yes.

9 Q. And that was before the start of this trial?

10 A. The trial had already started.

11 Q. The trial had already started when you got the
12 message?

13 A. Uh-huh. Yes.

14 Q. So it was during the course of this trial you got
15 the message from the defendant?

16 A. Yes.

17 Q. And you were asked during an FBI interview to turn
18 over that text message, right?

19 A. I didn't have it anymore.

20 Q. Right. You deleted it, you said?

21 A. Yes.

22 Q. You said yesterday that you deleted it?

23 A. Yes.

24 Q. You were asked to turn over your phone records,
25 correct?

1 A. No.

2 Q. Nobody asked you that during your FBI interview?

3 A. No.

4 Q. You haven't disclosed your phone records, have you?

5 A. No.

6 Q. You volunteered to be here today, right?

7 A. Yes.

8 Q. And today you say that Defendant Wimbush was with
9 you at the moment that Deputy Warden Hinton was
10 assaulted?

11 A. Yes.

12 Q. But you can't say exactly when he was with you,
13 right? You don't know the specific minute that he was
14 with you?

15 A. Not the exact time.

16 Q. And you can't say the specific minute that he left?

17 A. No.

18 Q. You didn't write that down somewhere?

19 A. No.

20 Q. It didn't seem important to you at the time?

21 A. No.

22 Q. You talked to the FBI back in April of 2013, right?

23 A. I don't remember which --

24 Q. Do you remember testifying in the grand jury in
25 April of 2013?

1 A. Yes.

2 Q. That was about a year ago? Roughly?

3 A. Yes.

4 Q. And that was in connection with a federal
5 investigation involving your former boyfriend, Defendant
6 Wimbush?

7 A. It was what now?

8 Q. In connection with a federal investigation
9 involving your former boyfriend, Defendant Wimbush?

10 A. I'm not -- I'm not sure.

11 Q. You were asked then back in April of 2013 about an
12 incident in which CERT officers had escorted an inmate
13 named Jabaris Miller and beaten him behind the ID
14 building. Do you remember that?

15 A. I remember that.

16 Q. Okay. Do you remember being asked about that
17 incident involving CERT officers?

18 A. Yes.

19 Q. And an allegation that they had beaten an inmate
20 behind the ID building?

21 A. Yes.

22 Q. And you understood at that time that your former
23 boyfriend, Defendant Wimbush, was on CERT?

24 A. Yes.

25 Q. So you understood that your former boyfriend was

1 implicated in this federal investigation?

2 **A.** Yes.

3 **Q.** And that's when you sat down and talked with the
4 FBI and appeared before the grand jury?

5 **A.** Yes.

6 **Q.** You denied seeing your boyfriend or any other CERT
7 officer beat Inmate Miller behind ID, right?

8 **A.** Yes.

9 **Q.** You said you didn't see it?

10 **A.** I didn't.

11 **Q.** But you did admit that you had seen CERT officers
12 take Inmate Miller through the ID building, right?

13 **A.** Yes.

14 **Q.** And you said when you saw the CERT officers take
15 Miller through ID he didn't have any injuries?

16 **A.** I don't recall saying that.

17 **Q.** So you don't recall saying that. You think he
18 might have had injuries?

19 **A.** Probably, cause he was just in an altercation.

20 **MR. CHRISTIAN:** Your Honor, may I approach with
21 the grand jury testimony?

22 **THE COURT:** You may.

23 **MR. CHRISTIAN:** We're going to mark it for
24 identification. It's 129, Your Honor.

25 **Q. BY MR. CHRISTIAN:** I'm going to direct your

1 attention to page six, the bottom of the page. Do you
2 see where I am at the bottom of the page? You were
3 asked: When Inmate Miller was brought to ID, did he have
4 any visible injuries? And your answer was: I haven't
5 seen any of the injuries during the escort. You were
6 asked on the next page: Did you ever see Inmate Miller
7 bleeding as he was brought through ID out of the back?
8 And you said: No. Was that your testimony back in April
9 of 2013?

10 A. Yes.

11 Q. Today you think he had injuries, though, when CERT
12 brought him through?

13 A. Do I think he had them?

14 Q. Today.

15 A. Repeat your question.

16 Q. Is your testimony today that you believe that
17 Inmate Miller had injuries when you saw him with CERT?

18 A. He could have. I'm not sure -- I don't --

19 Q. But back in April of 2013 --

20 A. I don't remember seeing any.

21 Q. Okay. So was your testimony in April of 2013
22 accurate?

23 A. Yes.

24 Q. You said: I haven't seen any injuries during the
25 escort. Did you ever see him bleeding? And you said:

1 No?

2 A. No, I wasn't really paying attention.

3 Q. That's your testimony today?

4 A. Yes.

5 Q. When you talked to the FBI back in 2013 during your
6 interview and during the grand jury appearance, did you
7 mention that your former boyfriend had been with you
8 during the Westbrook incident?

9 A. No.

10 MR. CHRISTIAN: Thank you, Your Honor.

11 MR. HOGUE: A couple on redirect, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. HOGUE:

14 Q. Ms. Clark, when you were at the grand jury or even
15 in the FBI interview before then, did anyone from the
16 government even utter the name Mario Westbrook to you?

17 A. No.

18 Q. If they had and they told you he's the guy that
19 assaulted the Deputy Warden, would you have told them
20 what you've told this jury today?

21 A. Yes.

22 Q. All right. And with respect to the time of day,
23 you remembered that it was after work that you and
24 Derrick drove home. Where in the house were you? Can
25 you remember that?

1 **A.** In the kitchen.

2 **Q.** Were you all eating dinner or supper, whichever you --

3 **MR. CHRISTIAN:** Object to leading, Your Honor.

4 **THE COURT:** Ask a non-leading.

5 **MR. HOGUE:** Okay.

6 **Q.** **BY MR. HOGUE:** What were you doing in kitchen, if
7 you remember?

8 **A.** If I recall, we were just sitting around the table.

9 **Q.** Was it evening time or afternoon?

10 **A.** It was after 4:30. I'm not quite sure of the time.

11 **Q.** Good enough. After the work day. I don't have
12 anything further.

13 **THE COURT:** May this witness be excused?

14 **MR. CHRISTIAN:** Yes, Your Honor.

15 **THE COURT:** Thank you, Ms. Clark. You are
16 excused.

17 **MR. CHRISTIAN:** Your Honor, may I approach to
18 swap out the exhibit to give an unmarked-up copy of the
19 grand jury testimony, Government's 129?

20 **THE COURT:** Yes.

21 **COURTROOM DEPUTY:** Do you solemnly swear that
22 the testimony you're about to give in this case shall be
23 the truth, the whole truth, and nothing but the truth, so
24 help you God?

25 **THE WITNESS:** Yes, ma'am.

1 **COURTROOM DEPUTY:** Would you please state your
2 name for the record.

3 **THE WITNESS:** Gregory McLaughlin.

4 **GREGORY MCLAUGHLIN**

5 **Witness, having first been duly sworn, testified on**

6 **DIRECT EXAMINATION**

7 **BY MR. HOGUE:**

8 **Q.** Good afternoon, Warden McLaughlin.

9 **A.** How you doing, sir.

10 **Q.** Good. Where are you a warden?

11 **A.** Macon State Prison in Oglethorpe, Georgia.

12 **Q.** How long have you been the warden there?

13 **A.** July the 5th will be four years.

14 **Q.** So July 5th, 2010 is when you started?

15 **A.** Yes.

16 **Q.** All right. You're familiar with the case that
17 you're here about now, right?

18 **A.** Well, you know, there are several cases. So you
19 tell me which one you're talking about.

20 **Q.** The one involving these men right here, including
21 my client, Derrick Wimbush? You know why you're here?

22 **A.** Oh, yeah, oh, yes.

23 **Q.** All right. Do you recall ever receiving a subpoena
24 or a request from the government made to you for records
25 that the prison keeps, if they do, regarding time sheets

1 on CERT members? Do you ever remember that? Not the
2 recent one from me, but earlier from anyone else?

3 A. No. The first subpoena I seen was yesterday.

4 Q. Okay. So you don't have any memory of any prior
5 subpoenas for records, like time sheets?

6 A. No. There was a subpoena that was sent to me that
7 said I was supposed to be here Monday and I really don't
8 know who it was from because my administrative assistant
9 handled it, but I understand that it wasn't served to me
10 personally so I didn't have to show up.

11 Q. Okay. After that one, did you get a subpoena
12 personally served on you?

13 A. Yesterday, yes, sir.

14 Q. Yesterday?

15 A. Yes, sir.

16 Q. And that subpoena requested what, do you remember?

17 A. Time sheets. Yes, sir.

18 Q. All right. Did it request other stuff too?

19 A. It did -- I have the piece of paper in my pocket.
20 Can I look at it?

21 Q. You sure can. Go ahead and look at it.

22 A. All right. Do you want me to read it?

23 Q. What all did it request that you bring to court
24 today?

25 A. Can I read it verbatim?

1 Q. You may.

2 A. All right. Bring with you any document by whatever
3 name that reflects the entry and exit times of employees
4 through the main gate, through the administration
5 building, and into the prison, to include CERT members on
6 the following dates, October 25th, 2010, October 28th,
7 2010, December the 14th, 2010, and December the 16th,
8 2010.

9 Q. Well, let's stop there.

10 A. Yes, sir.

11 Q. There's three of them, but let's take them one at a
12 time. So what do you understand request number one to be
13 asking you to bring to court today? Just to sum it up,
14 what it's looking for?

15 A. Time sheets and anything --

16 Q. No, no. Number one, just number one.

17 A. Number one. Bring with you a document of whatever
18 the name reflects the entry and exit times of employees
19 through the main gate.

20 Q. And do you have any of those?

21 A. No.

22 Q. Do you know why?

23 A. Because we don't sign in at the front gate.

24 Q. Oh, okay. All right. So go on to number two.

25 A. October 20 -- number two. Bring with you any time

1 sheets by whatever name that reflects the times when CERT
2 members sign in and out and indicating that they are on
3 duty for the following dates, October 25th, 2010;
4 October 28th, 2010; December 14th, 2010; and
5 December 16th, 2010.

6 Q. Now, you were able to find those?

7 A. My administrative secretary was, yes.

8 Q. All right. We're going to come back and talk about
9 those, but let's go ahead and wrap up number three first.
10 What does number three on the subpoena request that you
11 bring to court?

12 A. Bring with you any video recording of parking lot,
13 entrance area, or administrative entrance area that would
14 show the arrival and departure of employees for the
15 following dates, October 25th, 2010; October 28th, 2010;
16 December 14th, 2010; and December 16th, 2010.

17 Q. Did you bring any videos?

18 A. No. I don't have any videos.

19 Q. And do you know why?

20 A. Because we don't video the parking lot.

21 Q. Okay. All right, let's go back to number two then.
22 You say your assistant collected those time sheets for
23 you?

24 A. Yes.

25 Q. And did you bring them with you?

1 **A.** Yes.

2 **Q.** All right. Do you have them in your pocket?

3 **A.** Yes, sir.

4 **Q.** Let me put an exhibit sticker on those.

5 **MR. CHRISTIAN:** Mr. Hogue, do you want to use a
6 clean copy of what you e-mailed me last night?

7 **MR. HOGUE:** Well, I'll use the ones he brought,
8 but I'm going to take the cover email off of it.

9 **MR. CHRISTIAN:** Can I see what he brought then?

10 **MR. HOGUE:** You can keep that.

11 **Q.** **BY MR. HOGUE:** All right. I'm going to mark this
12 as Wimbush 11. Warden McLaughlin, do you recognize what
13 those are, what you brought with you to court today?

14 **A.** Yes, sir.

15 **Q.** And what are they?

16 **A.** They're copies of Officers Wimbush, Officers
17 Delton, and Officer Ronald Lach, and Officer Tyler
18 Griffin's time sheets.

19 **Q.** Okay. They're time sheets. Are you familiar with
20 the use of time sheets in the prison for CERT members?

21 **A.** Yes, sir.

22 **Q.** And are CERT members on salary or hourly?

23 **A.** Salary.

24 **Q.** Salary?

25 **A.** Yes, sir.

1 Q. What's your understanding of why time sheets are
2 required therefore?

3 A. Therefore this is how we get paid, and this is the
4 time that we enter, we have to account for the time that
5 we enter and exit the institution whenever we're there.

6 Q. Okay. Now, we'll get to what you're looking at and
7 show the jury in a minute, but is this a form that's
8 produced in the prison and it's got boxes that the
9 employee fills in?

10 A. Yes, sir.

11 Q. All right. So, how -- what length of period is one
12 of those sheets for? Is it an entire month?

13 A. 28 days.

14 Q. 28 days. All right. Go to the ones that relate to
15 Derrick Wimbush.

16 A. Okay.

17 Q. There should be two pages in there relating to him,
18 am I right?

19 A. Yes, sir.

20 Q. Okay.

21 MR. HOGUE: And at this point, Your Honor, in
22 light of previous conversations we've had with the
23 government and the Court, I tender these into evidence so
24 I can publish them to the jury.

25 MR. CHRISTIAN: No objection other than what we

1 discussed previously, Your Honor.

2 **THE COURT:** Hearing no objection, other than
3 what we've talked about, they are admitted without
4 objection.

5 **Q. BY MR. HOGUE:** All right. Warden McLaughlin, I
6 want to take you to the one on Derrick Wimbush for the
7 period 10/16/10 to 11/12/10. Are you with me?

8 **A.** Yes, sir.

9 **Q.** You got that sheet?

10 **A.** Yes, sir.

11 **Q.** All right. I've put -- well, let's go up to the
12 top first. Do you see it's called split shift,
13 Department of Corrections, and I read the right period,
14 and this one is for Derrick Wimbush, right?

15 **A.** Yes, sir.

16 **Q.** And then because it doesn't fit, I'm going to move
17 it around here. It's got the dates on the left and then
18 you can see various columns going all the way over to
19 comments, type of leave. What's that column for, the
20 comments column?

21 **A.** Oh, that's -- I use it for -- we use it for several
22 different things. One, when we come back to work. If we
23 leave the work during our regular hours or when we come
24 back to work, we use it for that. We use it for any
25 special events that we have. For instance, I use it

1 because like today I'm in court, so I put the time that I
2 came to court and then I go back in the comment slot and
3 I put that I attended federal court today on today's
4 date.

5 Q. All right. And you notice this has what appears to
6 be handwriting on it. Do you have any personal knowledge
7 whose handwriting that is?

8 A. No, sir.

9 Q. Typically, though, who fills in a time sheet on a
10 particular employee?

11 A. Each individual officer.

12 Q. So would you infer that Derrick Wimbush is the
13 person who wrote on this timesheet?

14 A. His signature is here, yes, sir.

15 Q. And there's a signature of supervisor as well?

16 A. Yes, sir. Sergeant Hall.

17 Q. At the bottom?

18 A. Yes, sir.

19 Q. What's the purpose of having a supervisor sign a
20 time sheet?

21 A. So that he or she can verify that those -- this
22 individual actually worked those hours and he did what he
23 said he did.

24 Q. All right. All right, let's go to the first two of
25 the four dates we're going to talk about, 10/25/2010.

1 And what time did Derrick Wimbush indicate he started his
2 work day?

3 A. Zero 630.

4 Q. All right. And what time did he end?

5 A. It appears to be 1830.

6 Q. And probably everybody knows military time, but
7 that would be what?

8 A. 6:30 in the evening.

9 Q. And now, what -- what are those letters in the
10 comment section?

11 A. PT?

12 Q. What's PT stand for?

13 A. Physical -- in our world, it's physical training.

14 Q. Okay. And what is physical training, what does
15 that tell you when you look at it on Derrick Wimbush's
16 time sheet?

17 A. Well, probably I had some officers -- some
18 applicants to come in and apply for a job and he would go
19 out and he would run those officers or those applicants
20 for a PT test, and he's the one that actually does that
21 so.

22 Q. Can everybody hear okay?

23 A. Can they hear me?

24 Q. Just speak up a little bit --

25 A. Okay, I will.

1 Q. -- if you would, Warden. Were you familiar with
2 that assignment that Derrick Wimbush had, to conduct PT?

3 A. Yes.

4 Q. Were you the one that assigned him to do that among
5 others?

6 A. No.

7 Q. Was he doing that when you -- well, you became
8 warden in 2010. Did he become the PT instructor at some
9 time during your tenure as a warden?

10 A. That's a good question. Someone was doing it. I
11 don't know if it was him. He might have been doing it
12 before I got there, but during my tenure, he was doing
13 it, yes.

14 Q. And you're familiar with what the PT person does,
15 right?

16 A. Yes.

17 Q. And you said new hires. Do current guards going to
18 PT training as well, or just new hires?

19 A. The new hires go, and if you're on the tactile
20 squad, you have to do it also, but new hires mostly.

21 Q. Now, are we talking about going to a place and
22 doing calisthenics, running, that sort of stuff?

23 A. Yes. We go to the Board of Education, which is
24 probably about two miles from the prison.

25 Q. All right. That was my next question. So this is

1 conducted off prison grounds?

2 A. Yes.

3 Q. If you had to get in your car and drive back to the
4 prison from the place where you do PT and then get inside
5 the prison and come through the gate and all that,
6 approximately how long would that take?

7 A. Well, it depends on how long the PT -- the training
8 takes because -- it depends. I mean, it's depending on
9 how many applicants you got that day -- you have that
10 day.

11 Q. Well, my question, though, is just the distance
12 from the BOE track where the training was conducted and
13 say you left and drove to the prison, then came through
14 the gate to get inside the prison to report for duty, if
15 you know, about how long would that take?

16 A. There's a lot that that entail because it's
17 depending on how many people are in front of you because
18 we can only x-ray one person at a time. We only let one
19 person go through the metal detector at a time. So I
20 really can't put a time limit on that because it takes --
21 it's a pretty strenuous -- it's pretty strenuous to get
22 inside of the institution.

23 Q. All right. Do your CERT members, back in 2010, did
24 they carry pagers on them?

25 A. 2010, did they carry pagers. Yes.

1 Q. So if they were needed at the prison they could be
2 paged to come back to the prison if they were off prison
3 grounds?

4 A. Yes, when it worked, yes.

5 Q. When they worked, okay.

6 A. Yes.

7 Q. All right. Well, let's go back. Do you remember
8 typically when PT would start each day?

9 A. Usually between -- we try to start at eight, but
10 sometimes it don't get started til about nine o'clock in
11 the morning. It's depending on how many applicants we
12 got, it's depending on how long it takes those guys to
13 fill out the paperwork, so usually about nine o'clock.

14 Q. Okay. And do you know, would it last the same
15 amount of time every time, or would it vary on how many
16 people were in PT?

17 A. It varies.

18 Q. All right. So is it fair to say then that "PT" in
19 that notation column would indicate that Derrick Wimbush
20 was at PT? Assuming it's true, that if he put "PT," he's
21 at PT training at the BOE track?

22 A. He's never lied to me.

23 MR. CHRISTIAN: Objection, Your Honor.

24 THE COURT: And the objection is?

25 MR. CHRISTIAN: He's asking if he knows what

1 this notation means in terms of what actually happened
2 that day. If he's got some basis for personal knowledge,
3 that's fine, but -- I mean, he can describe the documents
4 certainly.

5 **THE COURT:** Right. And he's told us what's on
6 the document. I don't know that he can say much more
7 than that. And he described generally what his
8 understanding of the activity would is.

9 **MR. HOGUE:** All right. I'll move on.

10 **Q.** **BY MR. HOGUE:** So go to 10/28/10, and what time
11 does it indicate that Derrick Wimbush reported for duty?

12 **A.** Zero 630 to 1900, which is seven o'clock that
13 evening.

14 **Q.** And does that column also have PT in it?

15 **A.** Yes, sir.

16 **Q.** All right. Go to the next page for the next pay
17 period and look at the top and tell the jury what pay
18 period we're about to look at?

19 **A.** 12/11 -- December 11th, 2010, date ended January
20 1st, 2007 -- January 1st -- January the 7th, 2011, I'm
21 sorry.

22 **Q.** Okay. You can see on my copy on the monitor -- and
23 this is showing up everywhere, I presume, right? Okay.
24 12/14/10, what time does it indicate Derrick Wimbush
25 started work that day?

1 A. 0730.

2 Q. Were you at the prison when Deputy Warden Hinton
3 was assaulted by Mario Westbrook?

4 A. Yes.

5 Q. Do you remember the day that happened?

6 A. 12/14/2010.

7 Q. Okay. Let's go across. It looks like he took a
8 meal start and end time and wrote that in, right, on
9 12/14/10?

10 A. Yes, sir.

11 Q. Okay. And an end time is what?

12 A. 1630 which is 4:30.

13 Q. 4:30 p.m.?

14 A. Yes, sir.

15 Q. And let's go to the comments column. Can you read
16 that?

17 A. Come back -- came back at 2000 hours to 2230 hours
18 which was eight o'clock to 10:30 hours.

19 Q. All right. Thank you, sir. Now, go down to
20 12/16/10, start time?

21 A. 0745.

22 Q. And it has a meal time and an end time?

23 A. 1900 hours, which is seven o'clock.

24 Q. And in the comments column, what does it indicate?

25 A. PT.

1 **MR. HOGUE:** Your witness.

2 **MR. PATE:** Your Honor, I do have a few
3 questions on direct.

4 **THE COURT:** All right.

5 **DIRECT EXAMINATION**

6 **BY MR. PATE:**

7 **Q.** Good afternoon, Mr. McLaughlin.

8 **A.** How you doing, sir?

9 **Q.** I'm doing well. I represent Tyler Griffin. Do you
10 remember Tyler?

11 **A.** No, I really don't.

12 **Q.** Okay. All right. Do you still have those
13 documents in front of you, the time sheets?

14 **A.** Yes, sir.

15 **Q.** I'm going to ask you a few questions about the time
16 sheets that have his name on it. Can you turn to those?
17 I believe those are the last two pages.

18 **A.** Yes, sir. Okay.

19 **Q.** I'll also do this so you can see it.

20 **A.** That's too close.

21 **Q.** The first page that deals with Mr. Griffin, does it
22 appear to be similar to the time sheets for other CERT
23 officers?

24 **A.** The first sheets --

25 **Q.** I guess my question is, there are two pages for

1 Mr. Griffin; is that correct?

2 A. Yeah. Okay, I'm on the first sheet now. Yes, sir.

3 Q. Okay. Does the first sheet indicate that Mr.

4 Griffin is on the CERT team during this period of time?

5 Does it indicate at the top that it's a split shift time
6 sheet?

7 A. Yes. It indicates that it's a split shift time
8 sheet, but I'm trying to recall Griffin on the split
9 shift. I just don't --

10 Q. All right. How about down at the bottom? Does it
11 show who his supervisor was?

12 A. Yeah, that appears to be -- it appears to be
13 Sergeant Hall. That's what I was looking at, so, yes.

14 Q. Okay. And what would that indicate to you?

15 A. That he was a part of the CERT team.

16 Q. Okay. What do the X's designate on these time
17 sheets?

18 A. Days off.

19 Q. Days off?

20 A. Yes, sir.

21 Q. Let me ask you to flip to that second page for Mr.
22 Griffin, if you will.

23 A. Okay.

24 Q. And let me first ask you, at the top of that page,
25 I see a different designation. What designation is at

1 the top of the second sheet for Mr. Griffin?

2 A. First shift AQ.

3 Q. And what does that indicate to you?

4 A. That he no longer works on split shift, that he now
5 works on a different shift.

6 Q. Okay. I also see quite a number of X's on this
7 sheet as well with no times. What does that indicate to
8 you?

9 A. That he did not start first shift at that
10 particular -- on those particular -- he did not work
11 first shift on those particular dates.

12 Q. Okay. Do you have any reason based on your
13 knowledge today or your review of these records as to
14 why?

15 A. No.

16 Q. Do you have any independent recollection as to why
17 Mr. Griffin went from the CERT team to a regular shift?

18 A. No.

19 MR. PATE: That's all I have, Your Honor.

20 THE COURT: Any other direct? All right, Mr.
21 Christian, you may cross.

22 MR. CHRISTIAN: Thank you, Your Honor.

23 Mr. Pate, can I have a copy of that exhibit?

24 MR. PATE: It's not the exhibit --

25 MR. CHRISTIAN: It's not? Is the exhibit still

1 up there? Where's the copy Mr. Hogue was showing?

2 MR. HOGUE: On the screen was mine, but he's
3 got the original.

4 MR. PATE: I've just got two sheets.

5 MR. CHRISTIAN: Okay. That's the original
6 then? May I approach, Your Honor?

7 THE COURT: You may.

8 CROSS EXAMINATION

9 BY MR. CHRISTIAN:

10 Q. The version that you have here doesn't have the
11 highlights that Mr. Hogue was showing, correct? You saw
12 the highlighted dates?

13 A. I didn't have any highlight dates.

14 Q. Okay. So that was on Mr. Hogue's copy?

15 A. I guess.

16 Q. Okay.

17 THE COURT: Mr. McLaughlin, do remember to
18 speak up.

19 THE WITNESS: Yes, sir.

20 Q. BY MR. CHRISTIAN: The time sheets that are on
21 here, you mentioned they were signed by Chris Hall?

22 A. Yes.

23 Q. He was the CERT sergeant, the supervisor, right?

24 A. Yes.

25 Q. So in order to determine what time somebody was at

1 actually at work, a CERT officer, you would look at the
2 time sheet which would be signed by the officer and
3 signed by the CERT sergeant?

4 A. Correct.

5 Q. Any other way to verify what time those folks were
6 actually there?

7 A. No.

8 Q. So it's just those two guys sitting down and
9 writing down, this is the time that I was here?

10 A. And that's what they do and then they send it to
11 personnel, right.

12 Q. Right. But no other verification other than that?

13 A. Just those two individuals, yes.

14 Q. No time clock, no time card?

15 A. No, sir.

16 Q. You said you didn't have knowledge of a government
17 request for these time sheets, these payroll sheets,
18 right?

19 A. I did.

20 Q. That was your answer?

21 A. You're right.

22 MR. CHRISTIAN: May I approach with
23 Government's 130, Your Honor?

24 THE COURT: You may.

25 Q. BY MR. CHRISTIAN: Sir, do you know what

1 Government's 130 is?

2 A. It appears to be a subpoena to testify before the
3 grand jury.

4 Q. Who is the subpoena addressed to?

5 A. Custodian of records, Macon State Prison.

6 Q. What's the date of the subpoena?

7 A. 9/27/2012.

8 Q. And if you could turn to page two, the fifth
9 paragraph, and tell us what was requested in 2012 from
10 Macon State Prison?

11 A. The fifth paragraph?

12 Q. Yes, sir.

13 A. Any and all Macon State Prison payroll records for
14 employees serving on October 25th, 2010 and December the
15 14th, 2010, and December 16th, 2010 (*reading*).

16 Q. And are those the dates you just discussed with Mr.
17 Hogue?

18 A. Yes.

19 MR. CHRISTIAN: Your Honor, I would ask to
20 approach with Government's 48, 50, 51, 59 and 64.
21 (*Counsel Aside*)

22 MR. CHRISTIAN: Your Honor, may I approach?

23 THE COURT: You may.

24 Q. BY MR. CHRISTIAN: Have you had a chance to look at
25 those generally? I'm going to take each one up in turn.

1 A. Okay. I'll wait on you then.

2 Q. Okay. Thank you. Government's Exhibit Number 48,
3 who is that witness statement from?

4 A. Delton Rushin.

5 Q. What's date of that?

6 A. 10/25/2010.

7 Q. What's the incident that it involves? Or the
8 inmate?

9 A. Franklin Jones.

10 **MR. CHRISTIAN:** Your Honor, I would move to
11 admit Government's Exhibit 48.

12 **MR. FOX:** That's fine.

13 **THE COURT:** It's admitted without objection.

14 Q. **BY MR. CHRISTIAN:** Can you turn to number 50.

15 A. Yes, sir.

16 Q. Who is that witness statement from?

17 A. Ronald Lach.

18 Q. What is the date of that statement?

19 A. 1/25/2010.

20 Q. What's it in reference to? Is it 1/25 or 10/25?

21 A. 1/25/2010.

22 Q. What's it in reference to?

23 A. Franklin Jones.

24 **MR. CHRISTIAN:** Your Honor, I would move to
25 introduce Government's Exhibit Number 50.

1 **MS. GOMEZ:** No objection.

2 **THE COURT:** It's admitted without objection.

3 **MR. CHRISTIAN:** And since that document has a
4 date of 1/25, Your Honor, may I approach with 50-A?

5 **THE COURT:** You may.

6 **Q. BY MR. CHRISTIAN:** Warden, what is 50-A?

7 **A.** A witness statement.

8 **Q.** Who's it from?

9 **A.** Ronald Lach.

10 **Q.** What's the date?

11 **A.** 10/25/2010.

12 **Q.** Does it appear to be consistent with the one that
13 was dated 1/25/2010 that was typed?

14 **A.** Verbatim.

15 **Q.** Verbatim?

16 **A.** Yes, sir.

17 **MR. CHRISTIAN:** Your Honor, I would move to
18 introduce Government's Exhibit Number 50-A.

19 **MS. GOMEZ:** No objection, Your Honor.

20 **THE COURT:** It's admitted without objection.

21 **Q. BY MR. CHRISTIAN:** Warden, what is Government
22 Exhibit Number 51?

23 **A.** Derrick Wimbush, witness statement.

24 **Q.** What's the date?

25 **A.** 10/25/2010.

1 Q. What incident is it in reference to?

2 A. Franklin Jones.

3 MR. CHRISTIAN: Your Honor, I would move to
4 introduce Government's Exhibit Number 51.

5 MR. HOGUE: No objection.

6 THE COURT: It's admitted without objection.

7 Q. BY MR. CHRISTIAN: Warden, what is number 59?

8 A. Witness statement.

9 Q. Who's it from?

10 A. Christopher Hall.

11 Q. What is the date?

12 A. 10/29/2010.

13 Q. What is it in reference to?

14 A. Carlos -- Sergeant Carlos Felton. This is where he
15 escorted Sergeant Carlos Felton to medical for treatment
16 for injuries.

17 MR. CHRISTIAN: Your Honor, I would move to
18 introduce Government's Exhibit Number 59.

19 MR. JARRARD: No objection.

20 THE COURT: It's admitted without objection.

21 Q. BY MR. CHRISTIAN: Number 64, Warden, last one?

22 A. Witness statement.

23 Q. Who's it from?

24 A. Christopher Hall.

25 Q. What is the date?

1 **A.** 12/15/2010.

2 **Q.** What's it in reference to?

3 **A.** Mario Westbrook and Deputy Warden James Hinton.

4 **MR. CHRISTIAN:** Your Honor, I would move to
5 admit Government's Exhibit Number 64.

6 **MR. JARRARD:** No objection.

7 **THE COURT:** It's admitted without objection.

8 **MR. CHRISTIAN:** Thank you, Warden.

9 **THE COURT:** Any redirect?

10 **MR. HOGUE:** No, Your Honor.

11 **THE COURT:** Mr. Pate?

12 **MR. PATE:** No, Your Honor.

13 **THE COURT:** May this witness be excused?

14 **MR. HOGUE:** He may, Your Honor.

15 **THE COURT:** Thank you, Warden. You are
16 excused.

17 **THE WITNESS:** Thank you, sir.

18 **THE COURT:** Mr. Hogue?

19 **MR. HOGUE:** Warden McLaughlin, you don't have
20 the exhibit in your hand, do you?

21 **THE WITNESS:** No, sir.

22 **MR. HOGUE:** All right. Good deal.

23 **THE COURT:** Okay, yeah, don't run away with
24 anything that's got a yellow sticker on it.

25 **THE WITNESS:** I gave it to him, Your Honor.

1 **MR. HOGUE:** Your Honor, on behalf of Derrick
2 Wimbush, we rest.

3 **THE COURT:** Thank you. Mr. Pate?

4 **MR, PATE:** Your Honor, I just have to tender
5 two documents we had previously provided to the
6 government. Defendant's Exhibit Griffith 3 and Griffith
7 4 which are pages from his personnel file.

8 **MR. CHRISTIAN:** No objection, Your Honor.

9 **THE COURT:** They are admitted without
10 objection.

11 **MR. PATE:** And with that, we rest.

12 **THE COURT:** Mr. Wolfe, I believe you did not
13 have anything further at this point?

14 **MR. WOLFE:** No. Thank you, Judge. We rest.

15 **THE COURT:** Any further evidence from the
16 defense? I appreciate y'all working out the order of
17 things. All right. Ladies and gentlemen, the defendants
18 have rested their case. Does the government have
19 rebuttal?

20 **MR. CHRISTIAN:** No, Your Honor. The government
21 rests.

22 **THE COURT:** Well, ladies and gentlemen, the
23 evidence is closed. I told you we were doing our best to
24 move things expeditiously, and it's also close to 3
25 o'clock. We've still got a lot more that we need to do.

1 I'm going to let you go to jury room, but I'm going
2 to ask you to hang around for just a few minutes, long
3 enough for me to discuss some scheduling issues with the
4 lawyers so that I can tell you when to be back tomorrow.

5 Remember my instructions overnight. Do not allow
6 yourselves to come into contact with any information
7 whatsoever about the case.

8 And even though the parties have rested as far as
9 the evidence is concerned, you don't have the case yet.
10 You'll have to be charged as to the law and you'll have
11 to hear the closing arguments of the lawyers. So it's
12 not time to start deliberating. It's not time to start
13 talking about the case. That will come soon enough.

14 All right. You can go to the jury room and give us
15 just a few minutes to let you know about scheduling.

16 *(Jury Excused)*

17 **THE COURT:** All right. Everybody's had enough
18 time to look at the draft charge I sent around? That was
19 a joke.

20 **MR. CHRISTIAN:** Too late in the day for jokes.

21 **THE COURT:** Obviously we've got a lot to talk
22 about -- well, we've got some to talk about as far as the
23 charges concerning. What has been e-mailed to you is a
24 rough draft of where we are, not at all to suggest a
25 final draft. I'm open to suggestions at this point about

1 how you want to try and schedule -- I want to have a
2 meaningful charge conference, obviously. The
3 government's thoughts on that?

4 **MR. CHRISTIAN:** I guess just an opportunity to
5 print it out, Your Honor. Get a chance to read over it
6 one time, and then I'm happy to meet then.

7 **THE COURT:** Any defendants' thoughts about it?
8 One option is to break for a while and come back and do
9 our charge conference, and then we can bring the jury
10 back in the morning and do closing, and move on.

11 And it is -- I know you've been here since early
12 this morning, but it's still just three o'clock. I tend
13 to think that's probably the -- certainly that's the best
14 use of the jury's time for us to do the charge
15 conference, take about an hour break, do that, and
16 hopefully get it done. Any objection to that?

17 **MR. CHRISTIAN:** Not for the government.

18 **THE COURT:** All right. Then, Ms. Hatcher, tell
19 the jury to be back at eight o'clock in the morning, or
20 be ready to go by eight o'clock in the morning.

21 I believe that I have followed up only with Mr. Hall
22 with regard to testifying. Am I correct about that?
23 Mr. Hinton, would you please stand, sir. Do you recall
24 the discussion we had earlier about your right to testify
25 or not?

1 **THE DEFENDANT:** Yes, Your Honor.

2 **THE COURT:** Your attorney has announced that he
3 has rested his case, and, of course, you have not been
4 called to testify. I assume that's your decision, that
5 you do not wish to testify?

6 **THE DEFENDANT:** Yes, sir.

7 **THE COURT:** Thank you, sir. Mr. Lach, you as
8 well have seen that your attorney has rested. You have
9 not testified. Is that your decision that you do not
10 wish to testify?

11 **THE DEFENDANT:** Yes, sir.

12 **THE COURT:** Thank you, sir. Mr. Rushin, your
13 attorney has announced that he has rested without calling
14 you as a witness. Is that your decision, you do not wish
15 to testify?

16 **THE DEFENDANT:** Yes, sir.

17 **THE COURT:** Thank you, sir. Mr. Wimbush, you
18 as well, now that your attorney has announced that he is
19 resting his case -- your case, is it your decision you do
20 not wish to testify?

21 **THE DEFENDANT:** Yes, sir.

22 **THE COURT:** Thank you, sir. Mr. Griffin, would
23 you please stand? Mr. Pate has rested his case on your
24 behalf. You have not testified. Is that your decision?

25 **THE DEFENDANT:** Yes, Your Honor.

1 **THE COURT:** You do not wish to testify?

2 **THE DEFENDANT:** Yes, sir.

3 **THE COURT:** Thank you, sir. Other than the
4 charge conference, any other -- and we'll be back in an
5 hour. But at the moment, any other business we need to
6 discuss?

7 **MR. CHRISTIAN:** We have an issue with the
8 certified conviction for Terrance Dean.

9 **MR. JARRARD:** Terrance Dean. Your Honor, and I
10 sent the proposed redactions to the government. I think
11 they need to respond. They've been tendered, so I think
12 we can get that accomplished.

13 **THE COURT:** Yeah, and hopefully there will be
14 no issue amongst y'all with regard to working that out.
15 Certainly at some point everybody has got to get together
16 with the evidence and make sure we've got that right and
17 the exhibits. All right. Let's reconvene at four
18 o'clock.

19 **(RECONVENED; ALL PARTIES PRESENT)**

20 **THE COURT:** I would proposed that we first look
21 at the draft charge and then address what's not in the
22 draft charge among your requested charges. Does anybody
23 see any problem with proceeding in that fashion? All
24 right. We're informal. As long as the court reporter is
25 able to pick you up, you don't have to stand. Your

1 clients are certainly welcome to stay, but that's
2 entirely up to you and your clients.

3 The preliminary charges pages one through seven.
4 Anybody have -- the character charge which is now at the
5 end will be moved to this section of the charge. But any
6 issues about the preliminary charges on those pages?

7 Hearing none, at page eight, there's just a
8 general discussion what I call Introductions.

9 **MR. JARRARD:** Your Honor?

10 **THE COURT:** Yes, sir?

11 **MR. JARRARD:** Count 2 -- on page eight where
12 the Court says: Count 2 charges that Defendant Hall, et
13 cetera. I think that should actually say though
14 specifically that they deprived Terrance Dean of his
15 constitution right. Dean is the only inmate mentioned in
16 Count 2, not inmates.

17 **THE COURT:** I think that's right.

18 **MR. FOX:** In that vein, Your Honor, I believe
19 substantive offenses would become substantive --

20 **THE COURT:** We still need to pick you up, Mr.
21 Fox.

22 **MR. FOX:** Sorry about that. I believe the
23 substantive offenses with regard to Count 2 would be
24 substantive offense.

25 **MR. CHRISTIAN:** The government agrees Your

1 Honor.

2 **THE COURT:** What is called a substantive
3 offense, specifically that they deprived --

4 **MR. JARRARD:** -- Terrance Dean of his --

5 **THE COURT:** -- Terrance Dean of his
6 constitutional right.

7 **MR. CHRISTIAN:** And then the last sentence
8 should be also changed.

9 **THE COURT:** Yeah, this substantive offense.
10 All right. Page nine, "on or about" and "knowingly."
11 Any issues there? Hearing none, page ten, multiple
12 defendants, multiple counts? All right.

13 **MR. WOLFE:** Excuse me, Judge, can I say one
14 thing?

15 **THE COURT:** Yes, sir.

16 **MR. WOLFE:** In that regard -- and it has
17 nothing to do with your charge. But I presumed that the
18 charge would go out and with regard to the verdict form
19 it says, the United States of America versus James
20 Hinton, et al.? I appreciate that everybody's name would
21 on the caption. And I just mentioned it now because you
22 said multiple.

23 **THE COURT:** Yes. We really don't even need a
24 caption, but we'll either take out the caption or we'll
25 add every defendant.

1 **MR. WOLFE:** Thank you.

2 **THE COURT:** All right. Beginning at page ten,
3 we get into Count 1. Pages 10, 11, 12, and 13, the first
4 paragraph on 13, are just a recitation of the language of
5 the indictment. Any issues there? And then at page 13,
6 we quote the statute and then provide the elements of the
7 offense. Any issues through there?

8 All right. Beginning at the bottom of page 13 and
9 through at the middle of 15, there's elaboration of the
10 first element of the offense. Any questions or comments,
11 criticism? All right.

12 And then page 15, we address the second element of
13 Count 1, and that goes through the bottom of page 16.
14 This is not word for word for what anybody gave me. I
15 kind of pushed it together. I deleted some things that I
16 thought -- I think from the government's request to
17 charge that I just thought didn't need to be included.
18 But if I've left out anything essential, let me know.

19 **MR. CHRISTIAN:** I'm sorry, Your Honor, what was
20 the last thing you said before that sentence?

21 **THE COURT:** Well, there was a couple of
22 paragraphs, and I think that it was in this section. I
23 left my marked up copy -- was this the one I took out?
24 It's was a paragraph "in other words." Any time I see an
25 "in other words" in a charge, my antennae go up a little

1 bit. I know I took out at an "in other words" paragraph.
2 It might not have been here. All I'm saying is I don't
3 think this is word for word what anybody gave me.

4 **MR. CHRISTIAN:** And this is still -- we're are
5 on the second element?

6 **THE COURT:** We're on the second element. And
7 then the third element begins at bottom of page 16, and
8 that continues to the bottom of page 18 where there's a
9 paragraph about the overt act, which, of course, are
10 treated different under Count 1 than they are under Count
11 3 for reasons I don't entirely understand, but that's the
12 way it is.

13 Now, I lean to perhaps being somewhat duplicative
14 with things like co-conspirators' conducts and statements,
15 and, unindicted, unnamed co-conspirators. That will be
16 repeated in Count 3. Is that right, Nicole?

17 **LAW CLERK:** Yes, sir, I think so.

18 **THE COURT:** Just for the sake of clarity I did
19 it that way, but if anybody sees a problem with that, let
20 me know when we get to Count 3. So any questions through
21 page 20, the middle of page 20, which covers the charge
22 on Count 1?

23 Count 2, the discussion of that begins on page 20.
24 It gives the elements and then the discussion of the
25 elements, the first element, begins on page 22. A minor

1 thing I noted the pattern charge says "under color of
2 state law." Nobody requested that. I don't see that it
3 is an issue. We just say "under color of law," which was
4 what was in the requested charges.

5 The second element discussion begins on page 22.
6 There's some shaded language on page 23. Was that Mr.
7 Jarrard's comment, or was that the government's comment?

8 **LAW CLERK:** I'm not sure. I know you had a
9 question about it.

10 **THE COURT:** Well, look at that shaded language.

11 **MR. JARRARD:** I'm pretty sure I didn't ask for
12 that to be included, if that's what you're asking, Judge.
13 So it must have been the government.

14 **THE COURT:** I think my question was whether or
15 not it's necessary. I see defendants shaking their
16 heads.

17 **MR. FOX:** Your Honor, I believe in light of the
18 remaining language that you have in this that it would
19 not be.

20 **MR. JARRARD:** Yeah, and I may have raised the
21 issue as I didn't think it ought to be included.

22 **THE COURT:** Right. Does the government have
23 any strong feelings if I take that language out?

24 **MR. CHRISTIAN:** I think it should be included,
25 Your Honor. And the questions about need for application

1 of force, I mean, I think that's directly on point.

2 **THE COURT:** Well, it is, but we've got ample
3 instruction in several places of the charge about
4 appropriate use of force. Was that in the pattern?

5 **LAW CLERK:** It's not in the criminal.

6 **THE COURT:** This language came from the civil
7 pattern charge. The pattern charges aren't the best in
8 the world in the Eleventh Circuit on this area. I've
9 just been put on that committee. We haven't tackled this
10 yet.

11 **MR. CHRISTIAN:** I've used it in other criminal
12 civil rights cases, but I believe it's appropriate here
13 particularly with respect to the need for the application
14 of force and the extent of the threat, if any, had been
15 posed.

16 **THE COURT:** Well, I'll go back and look at that
17 some more. I'm still thinking about that.

18 **MR. JARRARD:** Your Honor, I do think if -- one,
19 I think it ought to be taken out, but if it's not, I
20 think it needs to be modified to not to refer to
21 Mr. Dean. I mean, I think the factors could be set out
22 without the reference specifically to Mr. Dean. I mean,
23 if the Court is just saying these are factors to
24 consider -- now, again, I start with I think it ought to
25 be stricken.

1 **THE COURT:** Well --

2 **MR. JARRARD:** For instance -- well, I didn't
3 want to interrupt you, Your Honor. I can tell you what
4 my "for instance" is.

5 **THE COURT:** Well, go ahead.

6 **MR. JARRARD:** Again, I think it ought to come
7 out completely, but as a fallback, for instance, it
8 should say the extent of the injury inflicted upon the
9 individual, the extent of the threat, if any, the
10 individual posed.

11 **THE COURT:** Well, I think that it's probably
12 appropriate to reference Mr. Dean. I do think it needs
13 to say the extent of "any injury" inflicted upon
14 Mr. Dean.

15 **MR. CHRISTIAN:** Your Honor, the language that's
16 included in the government's proposed instruction that's
17 adopted here, comes straight from *Whitley v. Albers*, a
18 Supreme Court case in 1986. 475 U.S. 312, at 320 to 21.

19 **THE COURT:** And what was that case?

20 **MR. CHRISTIAN:** *Whitley v* --

21 **THE COURT:** No, I mean, criminal or civil?

22 **MR. CHRISTIAN:** I don't recall off the top of
23 my head unfortunately.

24 **THE COURT:** If it was *Whitley v. Albers*, it
25 wasn't a federal criminal prosecution.

1 **MR. CHRISTIAN:** I don't think so. Albers,
2 A-L-B-E-R-S.

3 **THE COURT:** Okay. Well, I'll take a look at
4 that.

5 **MR. CHRISTIAN:** Thank you.

6 **THE COURT:** All right. And then the third
7 element is on page 24, and it goes through page 25, the
8 first two paragraphs. Any comments, questions, or
9 criticisms about that?

10 All right. Then the final element begins at page 25
11 and goes through the middle of page 26. We will put a
12 heading there, by the way, for Count 3. And, by the way,
13 sometimes I take the headings out, what I give the jury.
14 I've taken a lot of the headings out, but I've left some
15 in, and I've done that on purpose. With a charge like
16 this, I think it would be better for them to have vanilla
17 headings, and we will put a heading at page 26 for Count 3.

18 **MR. CHRISTIAN:** Your Honor, the only thing I
19 would say, at the bottom of page 25, the last sentence?

20 **THE COURT:** All right.

21 **MR. CHRISTIAN:** Bottom of page 25 onto the
22 first line of page 26. It says: The defendants' acts
23 are the direct, immediate, or sole cause of bodily
24 injury?

25 **THE COURT:** Yeah.

1 **MR. CHRISTIAN:** There's a Supreme Court case
2 Burrage, B-U-R-R-A-G-E. I don't have the cite on me at
3 the moment, unfortunately, but I believe that under that
4 case, it would strike the words "direct" and "immediate."
5 So the sentence would be: The defendants' acts were the
6 sole cause of bodily injury.

7 **THE COURT:** All right. Well, we can find that
8 case.

9 **MR. CHRISTIAN:** And it's B-U-R-R-A-G-E, I
10 believe.

11 **THE COURT:** I'm not sure why direct or
12 immediate -- I don't know what it adds.

13 **MR. CHRISTIAN:** That's my --

14 **THE COURT:** I see the point.

15 **MR. CHRISTIAN:** That's my understanding of that
16 case, but I don't know the rationale behind striking or
17 including those two words.

18 **THE COURT:** All right. I'm sure we can find
19 that case. I mean, is direct and immediate supposed to
20 suggest anything other than sole cause? I guess that's
21 the question. If it's not, then it's clearly
22 unnecessary. If it is, then what is it? We'll see if we
23 can run that down.

24 All right, Count 3, pages 26 through 30 simply
25 recites the pertinent portions of the indictment.

1 **MR. WOLFE:** Judge?

2 **THE COURT:** Yes, sir.

3 **MR. WOLFE:** With regard to that, where it says
4 Count 3 of the indictment charges the defendants -- and
5 lists their names -- with a separate conspiracy to cover
6 up abuses. Actually the indictment -- well, actually
7 1512(b)(3) doesn't include covering up. 1519 does
8 include covering up, but in the indictment where it says
9 what they did pursuant to the Code Sections with regard
10 to 1519 which would be paragraph B, it says:

11 Did knowingly make a false entry with the intent to
12 impede, obstruct, and influence the investigation and
13 proper administration of a matter within federal
14 jurisdiction.

15 Now simply -- I mean, cover up is an element of
16 1519, but they didn't charge it in paragraph B. They
17 allude to it elsewhere in the language, but with regard
18 to the violation of 1519, obstruct is not there. So I
19 don't think obstruction has been charged against these --
20 when I say obstruction, I mean cover up. Cover up.
21 Please excuse me.

22 **THE COURT:** Well, and you made that point in
23 your objections, and I'm certainly not wedded to this
24 language. The full language gets explained, and I know
25 what I was looking for was a shorthand way to generally

1 describe the subject of this indictment. I think that
2 point comes up maybe in another place as well.

3 **MR. JARRARD:** Why not call it a conspiracy to
4 obstruct as the heading of the count?

5 **MR. CHRISTIAN:** Your Honor, I think the
6 language tracks the plan and purpose of the conspiracy,
7 the first sentence in the plan and purpose of the
8 conspiracy section of the indictment on page seven?

9 **MR. WOLFE:** Yeah, but where it says "as charged
10 in the remaining counts of the indictment and
11 incorporated hereof, A, to knowingly engage in misleading
12 conduct with the intent to hinder, delay, and prevent the
13 communication to a federal law enforcement," and that
14 sort of thing. But that's 1512, which doesn't have a
15 cover-up component. 1519 does in the code section, but
16 it says with regard to 1519, "to knowingly falsify and
17 make a false entry in a document with the intent to
18 impede, obstruct, and influence the investigation," not
19 to cover it up, which is one of the elements of 1519. So
20 therefore, I don't think they should be allowed to argue
21 that our conduct was to cover it up.

22 **MR. CHRISTIAN:** That's what the plan and
23 purpose of the conspiracy is on page seven.

24 **MR. WOLFE:** It's not what the charge is --

25 **MR. CHRISTIAN:** That's part of the charge.

1 **MR. WOLFE:** -- in regard to 1519. They didn't
2 track that language. In fact, they excluded it.

3 **THE COURT:** Well, I mean, you're right, the
4 statute uses the word "covers up." The indictment
5 alleges they made a "false entry," which the statute also
6 uses that word. Legally does that make a difference,
7 Mr. Wolfe? I mean, a false entry is a cover-up.

8 **MR. WOLFE:** Yes. My argument would be that if,
9 in fact, they're alleging you did something in particular
10 way and you're allowed to put every way in the
11 indictment, and then as long as you prove one
12 unanimously, that's fine. But if you leave out the very
13 element that's in the code section in the indictment,
14 then that element is not in play. If you're charged with
15 possessing and manufacturing and possessing with intent
16 to distribute drugs, that's great, but you can't convict
17 somebody of manufacturing if you didn't make that
18 allegation in the indictment even though you could allege
19 each different way.

20 **THE COURT:** Mr. Christian?

21 **MR. CHRISTIAN:** Your Honor, it's in the plan
22 and purpose of the conspiracy. It specifically uses the
23 phrase "cover up" on page seven. I understand the Court
24 is trying to find a shorthand way of explaining what this
25 count is. I'm happy if the Court wants to go long form

1 to include the first sentence in the plan and purpose of
2 the conspiracy on page seven that talks about the plan
3 and purpose was to provide false and misleading
4 information about CERT members' assaults on inmates, it
5 identifies the inmates, and then it says "and would cover
6 up other information to ensure that officers involved in
7 the assaults would be shielded from liability (*reading*)."

8 **MR. WOLFE:** Whether or not you have to include
9 a plan or purpose, whether or not you have to include the
10 overt act that they're convicted of, all that sort of
11 stuff is language that's in the count of the indictment,
12 but the specific language that says which elements of
13 Title 18, Section 1519 have been violated, "cover up" is
14 not alleged. And I didn't draft it. I'm just pointing
15 out it that it's not there so now they should not be able
16 to convict based upon it.

17 **THE COURT:** Well, Mr. Wolfe, if you've got some
18 law that supports that argument, I'll take a look at it.

19 **MR. WOLFE:** Okay.

20 **THE COURT:** And I'll look at it as well. And I
21 guess the point you're making is that the government when
22 it is indicting somebody under this statute has to pick
23 which one --

24 **MR. WOLFE:** They actually don't. They can
25 include all of them.

1 **THE COURT:** Well, they could, but if they
2 don't -- if they don't include "cover up," but they
3 include "false entry," then they can't argue cover-up.

4 **MR. JARRARD:** The question becomes what was the
5 false entry for, and that's fine, but they have not
6 alleged that we made false entries to cover up. And, I
7 mean, it's -- the language is clear in the code section,
8 and it wasn't included in the indictment.

9 **THE COURT:** Well, again, if you've got some law
10 on that, I'll take a look at it. I don't know that I can
11 read the code section to impose --

12 **MR. WOLFE:** It seems like a constructive
13 amendment, but I'll look into it and get you something.

14 **MR. JARRARD:** I agree, Your Honor. And I'll
15 pull the constructive amendment law. I think that is a
16 constructive amendment.

17 **THE COURT:** Well, subject to that, I happen to
18 think that in terms of a generic term to describe the
19 subject matter of Count 3 as used in that introductory
20 paragraph, "cover up" is as good as any. The plan and
21 purpose does elaborate on that. So I'll think about
22 that, but that doesn't cause me particular concern.

23 All right. And then we are -- we covered the overt
24 acts through page 30, top of page 30.

25 **MR. CHRISTIAN:** Paragraph seven on page 29,

1 Your Honor? It's just a typographical error. It refers
2 to Dean, and then, at one point it refers to him as
3 Inmate TD.

4 **THE COURT:** The elements for -- at page 30?
5 Any issue there? The elaboration on the first element of
6 page 31, I note this. The shaded paragraph -- or, by the
7 way, "either spoken or unspoken" is highlighted because,
8 Mr. Jarrard, you raised an issue as to that. I think
9 that's the law, but that's the reason that's highlighted.

10 **MR. JARRARD:** Where at, Your Honor, I'm sorry?

11 **THE COURT:** I'm at page 31.

12 **MR. JARRARD:** I'm sorry. No, I agree with you.

13 If I did, that was -- I don't know what that was about.

14 **THE COURT:** Okay. Now, the next paragraph as
15 far I can tell is certainly a correct statement. It's
16 slightly different wording that was in Count 1. I point
17 that out. If anybody sees an issue there, let me know.

18 Then the second element begins at page 32. And the
19 reason that we've got that "knowingly and willfully"
20 shaded there is only because we got that pattern charge
21 at the beginning on "knowingly," and apparently nobody
22 requested -- isn't "willfully" included in that pattern
23 charge as well?

24 **LAW CLERK:** Willingly as to joining. Knowingly
25 as to knowing --

1 **THE COURT:** No, I mean the --

2 **LAW CLERK:** The knowingly -- on or about
3 knowingly, willfully?

4 **THE COURT:** Yeah.

5 **LAW CLERK:** It's in brackets. I mean, we can
6 add it.

7 **THE COURT:** It's in the pattern?

8 **LAW CLERK:** It's in the pattern in brackets.
9 It's optional.

10 **THE COURT:** Any reason --

11 **MR. JARRARD:** Which pattern, Your Honor?

12 **THE COURT:** Well, if you look back at the
13 beginning, "on or about?"

14 **MR. JARRARD:** Yes, sir, I see it, and
15 "knowingly." I don't see "willfully" there.

16 **THE COURT:** Right. And isn't willfully
17 included in that?

18 **LAW CLERK:** Yeah, it's probably the same -- -

19 **THE COURT:** It's included in that pattern
20 charge.

21 **MR. JARRARD:** We do want "willfully" there,
22 Your Honor, and I don't see it in the draft. Is that --

23 **MR. CHRISTIAN:** I think it should be just
24 "knowingly."

25 **MR. JARRARD:** The conspiracy counts are

1 willfully.

2 **MR. CHRISTIAN:** I think it's just "knowing
3 participation in the unlawful agreement." "Knowingly
4 joined in the unlawful agreement."

5 **MR. JARRARD:** As to Count 3, the conspiracy?
6 Your Honor, it should be knowingly and willfully as
7 listed on page 30 of the second element.

8 **MR. WOLFE:** Page 33 also says that even a minor
9 person, if you can prove that he willfully joined.

10 **MR. JARRARD:** But as I understand the law too,
11 conspiracy counts are specific intent counts which are,
12 in other words, willfully.

13 **MR. CHRISTIAN:** I think the specific intent is
14 just knowing. It's not accidental or inadvertent
15 participation.

16 **MR. JARRARD:** I disagree, Your Honor, and I
17 think even the pattern instructions make clear that
18 specific intent is tantamount to willfully.

19 **THE COURT:** Well, the reason we put the second
20 element shaded is that we noted it was slightly different
21 from the pattern. What does the pattern say?

22 **MR. JARRARD:** And in that regard, Your Honor,
23 I'll point out that Count 3 of the indictment alleges
24 willfully, as it must, willfully combined.

25 **THE COURT:** I'm sorry?

1 **MR. JARRARD:** Count 3 which we're talking about
2 in the indictment, as it should, alleges willfully
3 combined. It's page six of the indictment.

4 **THE COURT:** Let me see what the pattern says --
5 where does the "knowingly" come from?

6 **MR. JARRARD:** It must come from the government.
7 The two conspiracy counts are willfully. The other
8 substantive counts, I think, are all knowingly, but the
9 two conspiracy counts were willfully.

10 **MR. CHRISTIAN:** It's included in the pattern,
11 Your Honor.

12 **THE COURT:** Pardon?

13 **MR. CHRISTIAN:** It's included in the pattern.
14 "Knew the unlawful purpose and willfully joined it."

15 **THE COURT:** Well, that is different than what
16 was requested. I think this came out of the government's
17 request to charge, which is the way it's stated as page
18 30.

19 **MR. JARRARD:** And, Your Honor, I think I
20 included on behalf of Mr. Hall a specific intent charge,
21 which I didn't see incorporated in the draft.

22 **THE COURT:** In answer to the first question,
23 yes, the pattern charge for "on or about, knowingly,
24 willfully" does include a definition of willfully. But
25 what's the conspiracy element in the pattern charge --

1 the second element in the conspiracy pattern charge?

2 **MR. CHRISTIAN:** Knew the unlawful purpose of
3 the plan and willfully joined it.

4 **THE COURT:** Any reason why we shouldn't go with
5 the pattern?

6 **MR. CHRISTIAN:** No, Your Honor.

7 **THE COURT:** All right. Then we will go with
8 the pattern charge on element two: "The defendant knew
9 the unlawful purpose of the plan and willfully joined it."

10 **MR. JARRARD:** In that regard, Your Honor, I
11 would say then on page 32 you have highlighted at the
12 bottom "you must first find that he?" I think it should
13 say "knowingly and willfully joined."

14 **THE COURT:** Mr. Christian, do you agree with
15 that?

16 **MR. CHRISTIAN:** Yes, Your Honor.

17 **THE COURT:** And it's at page 32, last
18 paragraph, "did knowingly and willfully." Do you want to
19 include, then, the pattern charge on willfully back in
20 the preliminary charges? We've got "knowingly," but
21 nobody requested "willfully" in that pattern. Should we
22 put that in there now?

23 **MR. CHRISTIAN:** I think that would be helpful,
24 Your Honor.

25 **THE COURT:** We'll add that. All right. The

1 second element of Count 3 continues to page 34. Any
2 issues there? All right. Third element begins on page
3 34 discussing overt acts. I don't hear any issues there.
4 The fourth element begins at page 35. Any issues there?

5 All right. Unindicted, unnamed co-conspirators and
6 then we repeat that, but I tend to think that's better in
7 a lengthy charge like this. Multiple objects of a
8 conspiracy at page 36.

9 All right. And then we get into the remaining
10 counts. First, Counts 4, 5, 6, 7, 8, and 9. Pages 37
11 through 41 simply recite those counts. Page 41, gives
12 the statute. The elements are at page 42. Any question,
13 comments, or criticisms on the charge for those counts?

14 All right. Then page 45, the discussion of Counts
15 12, 13, 14, 16, 17, 18, 20, and 21 begins. The counts are
16 recited at page 50, and here, the government does indeed
17 simply cite that portion of the statute about the false
18 entry.

19 **MR. CHRISTIAN:** Your Honor, on page 51, a very
20 minor issue on the first element? It just has the word
21 "handwritten" and the word "statement" capitalized?

22 **THE COURT:** Yes.

23 **MR. CHRISTIAN:** I would just ask that that be
24 put in lower case so the jurors are not looking for an
25 official GBI handwritten statement document.

1 **THE COURT:** Prison witness statement or a
2 handwritten statement.

3 **MR. CHRISTIAN:** The Macon State Prison witness
4 statement is, in fact, the title of that document, but
5 the GBI handwritten statement is just on a piece of
6 paper.

7 **THE COURT:** Okay. Yeah, I probably will, going
8 back to the general term in Count 3, come up with
9 something other than cover-up to describe that. I'll
10 give some thought to that.

11 **MR. CHRISTIAN:** And there's a typo also, I
12 believe, on page 52, the middle paragraph? The sentence
13 that starts with "it is wholly for you to determine
14 whether the documents the defendant is charged with?" I
15 think it should be document the defendant is charged
16 with.

17 **MR. JARRARD:** Mr. Christian, where are you at?

18 **MR. CHRISTIAN:** Page 52, the middle paragraph.
19 The one that starts: The FBI is an agency of the United
20 States? I just think it should be: It is wholly for you
21 to determine whether the "document" rather than
22 "documents."

23 **THE COURT:** Okay. All right. And, again, the
24 character evidence charge we'll move, duty to deliberate,
25 and the verdict form. We'll talk about the verdict form

1 in a minute. All right. Have we covered the draft
2 charge and your comments about the draft charge? Let's
3 talk --

4 **MR. JARRARD:** Your Honor?

5 **THE COURT:** Yes.

6 **MR. JARRARD:** Is the Court going to be in a
7 position to send us that this evening?

8 **THE COURT:** To do what?

9 **MR. JARRARD:** The re-advised --

10 **THE COURT:** Yes. We'll go to work on that in a
11 little bit and send that out. And let's talk about the
12 logistics of this. Sometimes I give the jury a copy of
13 the charge in the jury box. Sometimes I wait until they
14 get back there before they get a copy. Of course, they
15 all want their own copy, which means we've got to have 12
16 copies.

17 So the logistics are that, you know, in the morning
18 I need to know that we've got the final charge. Not that
19 wasting paper is the biggest thing we have to worry
20 about. There is both paper and some effort involved in
21 printing out 12 copies, or they're going to be more than
22 that. I'll wait til in the morning to do that, and we
23 can probably even do that while y'all are doing your
24 closing. But I need to know in the morning if there's
25 anything that we need to change, beyond what we end up

1 discussing tonight.

2 Now, does anybody have any charge that was not given
3 that you wish to address? Mr. Jarrard, I'll ask you
4 first.

5 **MR. JARRARD:** No, Your Honor.

6 **THE COURT:** Mr. Wolfe?

7 **MR. WOLFE:** No, thank you, Judge.

8 **MR. FOX:** No, thank you, Your Honor.

9 **THE COURT:** Mr. Hogue?

10 **MR. JARRARD:** None.

11 **THE COURT:** Ms. Gomez?

12 **MS. GOMEZ:** No, sir.

13 **THE COURT:** Mr. Pate?

14 **MR. PATE:** No, Your Honor.

15 **THE COURT:** So, you know, I will give you --
16 obviously you'll have an opportunity to make your
17 objections to the charge, but I don't want to be
18 surprised about an objection that's made tomorrow that we
19 haven't talk about today, and I'm taking from -- subject
20 to your last review of the charge, I'm taking from our
21 discussion this afternoon that I've addressed the issues
22 that you think I need to address with regard to the
23 charge.

24 **MR. JARRARD:** And I would anticipate Mr. Wolfe
25 and I will send some law on constructive amendment to you

1 just as soon as we leave.

2 **THE COURT:** Okay. Very good. Anything else to
3 discuss with regard to the charge? Closing arguments?
4 Time. Mr. Christian, what does the government propose
5 for its closing?

6 **MR. CHRISTIAN:** Maybe 75 minutes, Your Honor?

7 **THE COURT:** All right.

8 **MR. CHRISTIAN:** Hopefully not that long, but --

9 **THE COURT:** Well, of course, the government is
10 everything and the defendants, while I'm not saying you
11 only talk about your clients, but --

12 **MR. CHRISTIAN:** And that's the primary issue,
13 Your Honor, just the number of counts and the elements
14 for the different kinds of counts, just to recite those
15 for the jury is going to take some time.

16 **THE COURT:** All right. Any comments from the
17 defense about time? At this -- I can't imagine that the
18 defendants, any defendant, wants to take nearly the time
19 that the government wants to take, but at the same time
20 I'm not going to restrict you. Any defendant thinks that
21 counsel, he or she, will need more than 30 minutes, let
22 me know. Is that fair? Okay. All right. Any other
23 issues we need to discuss today then?

24 **MR. CHRISTIAN:** Not for the government, Your
25 Honor.

1 **MR. FOX:** Your Honor, I was going to say --
2 we're just talking about closings or all issues?

3 **THE COURT:** No, any issue now.

4 **MR. FOX:** In terms of the verdict form, I don't
5 have any objections per se, but I would just ask this.
6 My client is presumed to be innocent, that is, he's
7 presumed to be not guilty, and with that presumption in
8 mind, I would ask that the words "not guilty" appear
9 first in terms of elections and that the election for
10 guilty comes second.

11 **THE COURT:** I don't have a problem with that.
12 Ms. Hatcher, you've got to type it up, so --
13 *(Aside to Clerk)*

14 **MR. FOX:** And, Your Honor, I think the caption
15 on that would fall under Mr. Wolfe's concern about it
16 just being James Hinton, that if there was to be a
17 caption all the defendants would be on it.

18 **THE COURT:** Yes, this has the complete -- what
19 I'm looking at has the complete caption.

20 **MR. FOX:** Okay.

21 **MR. WOLFE:** Judge, with regard to the
22 government's argument, I understand, is there -- is
23 government required to open and close?

24 **THE COURT:** Yes. A meaningful opening, a
25 substantive opening. They don't have to close, but I'm

1 | sure they'll want to close.

2 **MR. CHRISTIAN:** It'll be much briefer, Your
3 Honor.

4 **THE COURT:** You do have to open. All right.
5 Anybody else that's thought of anything with regard to
6 the jury verdict form?

7 | **MR. CHRISTIAN:** Not for the government.

8 **THE COURT:** All right, any other issues? We
9 sent out the proposed redacted indictment. Anybody spot
10 any issues there?

11 | MR. CHRISTIAN: Not for the government.

12 **THE COURT:** All right. Anything from the
13 defendants' counsel?

14 MR. WOLFE: No, thank you.

15 MR. JARRARD: No, sir.

16 **THE COURT:** All right. We'll get started then
17 at 8 o'clock in the morning. Thank you all.

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1 CERTIFICATE OF OFFICIAL REPORTER

2 I, Sally L. Gray, Federal Official Court Reporter,
3 in and for the United States District Court for the
4 Middle District of Georgia, do hereby certify that
5 pursuant to Section 753, Title 28, United States Code
6 that the foregoing is a true and correct transcript of
7 the stenographically reported proceedings held in the
8 above-entitled matter and that the transcript page format
9 is in conformance with the regulations of the Judicial
10 Conference of the United States, dated this 10th day of
11 September, 2014.

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13 /S/ SALLY L. GRAY
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